Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

JAMES A. HANSEN,

Petitioner,

v.

STATE OF OREGON, CITY OF EUGENE,
JOHN C. WOOD, and RICHARD B. SIEL,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

At issue is a suit under 42 U.S.C. § 1983 for damages from an allegedly illegal search and seizure; the search had been authorized by a warrant substantially based on statements from a confidential informant. The questions presented for review are these:

(1) Whether a plaintiff may force the state to reveal the identity of an informant when the testimony of the informant is the plaintiff's only means of contradicting government witnesses and thus of pursuing his suit;

(2) Whether the holding of Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), which addressed the similar but decidedly different situation of an affidavit challenged at a pretrial suppression hearing in a criminal case, in any way sets out the law relating to a civil case.

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LOWER COURT OPINIONS

The unpublished opinions of the Ninth Circuit Court of Appeals and the District Court are copied in the appendix to this petition.

JURISDICTION

The judgment of the Ninth Circuit Court of Appeals was entered March 25, 1994. Title 28 U.S.C. § 1254 gives this Court jurisdiction.

APPLICABLE STATUTES AND CONSTITUTIONAL PROVISIONS

Title 42 U.S.C. § 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

The Fourth Amendment to the Constitution states:

> The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the Constitution states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Background

This is a claim under 42 U.S.C § 1983. Plaintiff alleged that defendants violated his Fourth Amendment right of privacy by conducting searches authorized by way of an affidavit whose allegations were materially false; further, that defendants included the false statements either intentionally or with reckless disregard for the truth.

A key part of the affidavit were statements made by a CRI (confidential reliable informant) and an unidentified third party (called the "source") who gave information to the CRI. As part of his discovery, plaintiff sought, by way of a motion to compel disclosure (CR 57), to learn the identity of the CRI and the source.

Plaintiff's motion was denied. (CR 64). At issue is whether the trial court's denial of that motion -- a denial affirmed by the Ninth Circuit -- was in error.

B. Course of Proceedings

Plaintiff filed suit on August 16, 1990. On October 31, 1991, plaintiff filed his motion to compel disclosure (CR 57). That motion was denied on November 12. (CR 64). Trial was held before the court on April 13-16, and resulted, on June 22, 1992 in the entry of findings adverse to plaintiff. (CR 121). A judgment of dismissal followed. (CR 122).

The matter proceeded to an appeal before the Ninth Circuit, which affirmed.

C. Summary of Facts

The complaint

Plaintiff's complaint alleged:

(1) Defendant Woods is a police officer employed by the State of Oregon; defendant Siel is a police officer employed by the City of Eugene, Oregon.

(2) Plaintiff is a businessman who operates two topless bars in Eugene.

(3) On February 27, 1990, defendants

obtained a search warrant authorizing a search of plaintiff's homes, businesses, automobiles, and airplane hangers. The goal of the searches was evidence of cocaine use, possession, or delivery.

(4) A massive search resulted. During the search, plaintiff was handcuffed at his home. No evidence of any controlled substance was found.

(5) Defendants Siel, Wood, and others (whose identity was not known) obtained the search warrant by use of an affidavit that contained false statements and material omissions of fact. Defendants knew the statements were false or incomplete, or they made the statements with reckless disregard for the truth.

The affidavit

A copy of the affidavit was introduced at trial as defendants' exhibit 111. A second copy, this one with numbered paragraphs (the original appears not to have

numbered the paragraphs) was introduced as an exhibit to plaintiff's motion to compel disclosure. For purposes of the discussion in this petition, it is that second copy (contents at App-43 of this petition) that has been used.

The allegations fall into three categories: (1) General allegations, mostly supplying background information, and which have little to do with establishing probable cause for a search; (2) allegations based on information obtained from a certain Terry Fisher; (3) allegations that attempt to corroborate Fisher's statements; (4) allegations based on information obtained from a CRI and the CRI's source; and (5) allegations that attempt to corroborate the CRI's statements. Each of these will be discussed separately.

(a) <u>The general allegations</u>

The affidavit was written by defendant Wood, who describes himself as a police officer with 17 years of experience. His

training has included specialized instruction in drug enforcement. For several months prior to signing the affidavit (i.e. for for several months prior to February 26, 1990), Wood had been involved in a criminal investigation of plaintiff and a person named Roger Lunde. (Affidavit ¶¶ 1-5).

Wood states that plaintiff is the owner of the Jiggles Tavern and the Alaska Bush Company and that "both establishments are topless night clubs that have been reported to have alleged narcotics activity." (Affidavit ¶ 6).

Wood states that he has talked with defendant Siel and another Eugene officer (Olson) and learned that plaintiff was associated in 1981 and 1982 with a certain Raymond Ainge, who was at that time successfully prosecuted for cocaine distribution. He claims to have learned that the United States Drug Enforcement Administration, during its 1981 investigation of Ainge,

found plaintiff's name on a list of people alleged to be distributing for Ainge. The affidavit contains no details regarding the supposed connection (at least eight years old) with Ainge. (Affidavit ¶¶ 7-9).

Wood states that Siel, during his nine years of narcotics related enforcement work, has received anonymous information regarding plaintiff's involvement with cocaine and has been told by plaintiff that he used cocaine. Siel reports regular conversations with plaintiff. (Affidavit ¶¶ 10-11).

Wood claims that FBI agent Mollerup has informed him that plaintiff has also had regular conversations with him. During one of these conversations, plaintiff supposedly told Mollerup that everyone in Eugene uses cocaine and gave the impression he felt that was acceptable behavior. (Affidavit ¶ 12).

According to Wood, the State Police, on September 2, 1988 received an anonymous call reporting that plaintiff was carrying

a 1/4 ounce of cocaine in his automobile. The caller was also said to have reported plaintiff's ownership of a gun and of a "scanner." (Affidavdit ¶ 13).

(b) Allegations regarding Fisher's statements

Wood states that he was contacted by Terry Fisher in September of 1989. Fisher was at that time a party in a lawsuit against plaintiff and had known plaintiff for more than a decade. Wood reports that Fisher told him (1) that he knew plaintiff to have been a distributor for Ainge in 1981 (2) that methamphetamine was sold in large quantities at one of plaintiff's taverns (3) that plaintiff's taverns were purchased with drug money (4) that plaintiff kept cocaine in the safes at both taverns (5) that plaintiff kept a gun in the desk drawer of his office at the Jiggles tavern and would often have lines of cocaine on the top of the desk (6) that plaintiff is supplied his cocaine

through San Francisco and flies his personal plane there every couple of weeks to pick up 20 to 30 kilograms (7) that plaintiff takes his 20 to 30 kilograms to his home in Sunriver, Oregon, from which a portion is then distributed to a contact in Portland (8) that plaintiff keeps hangars at the Eugene and Sunriver airports (9) that plaintiff's narcotics associates include Jack Smith, a bartender, Jack Esperanza, who worked at a used car lot, and Rob Roberts (10) that plaintiff has had an affair with Pam Higgins, who provides a "safe house" location for plaintiff's narcotics at her residence and (11) that plaintiff's motor vehicles include a 1987 Corvette, a silver and black Chevrolet Suburban, a blue 1984 Celebrity station wagon, and a 1987 Suzuki Samari. (Affidavit ¶¶ 15-19).

(c) Allegations attempting to corroborate Fisher's statements

Wood attempted corroboration of the statements he claims Fisher made to him. He

states that plaintiff presently drives a silver and black 1985 Chevrolet Suburban and is the registered owner of a 1987 Corvette, a 1984 Celebrity station wagon, a 1987 Suzuki Samari, and a Chevrolet pickup truck. (Affidavit ¶¶ 14, 22). He was able to confirm that plaintiff employed Jack Smith in 1987, that Jack Esperanza once worked at a used car lot, and that Rob Roberts, who has an arrest record for possession of a controlled substance, lived at a property owned by plaintiff (Affidavit ¶ 20). Concerning Pam Higgins, Wood learned she was a passenger on a plane plaintiff piloted in November of 1989 and that plaintiff visited her residence on February 2, 1990; further, that Siel had been told by plaintiff that he intended on eventually marrying her. (Affidavit ¶ 23).

Wood was also able to confirm that Fisher had indeed been in a lawsuit against plaintiff. (Affidavit ¶ 24). Testimony during that suit from witnesses for Fisher

indicated that plaintiff, "on one occasion," had purchased a 1/8th ounce of cocaine from a Keith Newbill, and on two occasions had bought cocaine from a certain Duane Calkins, while riding in a limousine. The affidavit gave no dates for these supposed sales. (Affidavit ¶¶ 24-26). Wood was able to verify that plaintiff does in fact own a limousine. (Affidavit ¶ 27).

Wood also learned facts that might have caused him to doubt Fisher's statements. He states that on February 5, 1990, he was told by an FBI agent that plaintiff had said that Fisher had publicly recanted the trial testimony regarding plaintiff's involvement with narccotics. (Affidavit ¶ 28). Wood claims to have searched the newspaper and elsewhere to locate any public retraction, but he was not successful. He chose not to recontact Fisher regarding the retraction because of the "potential of jeopardizing the investigation." (Affidavit ¶¶ 29-32).

(d) Allegations regarding statements from the CRI and the CRI's "source"

In addition to Fisher, Wood's second principal source was a Confidential Reliable Informant, who furnished him information about plaintiff and about a second suspect, Roger Lunde. Wood states that the CRI has told him he has known Lunde for several years and that Lunde is involved with plaintiff in the transportation, delivery and sale of cocaine. (Affidavit ¶ 33).

According to Wood, the CRI has informed him (1) that Lunde once lived in the Sunriver house owned by plaintiff (2) that Lunde owns a Chevrolet Corvette and a Chevrolet S-10 Blazer (3) that Lunde had a safe built into the floor of his home and uses it to store narcotics (4) that Lunde has an indoor marijuana growing operation (5) that Lunde flies to California to meet a cocaine connection accompanied by Anderson, a pilot (6) that Hal Gibbs deals for Lunde (7) that plaintiff and Lunde have Columbian drug connections in Cal-

ifornia (8) that Lunde was supposed to travel to California over Thanksgiving to pick up a large quantity of cocaine for him and plaintiff (9) that a third party "source" who is associated with plaintiff informed the CRI that plaintiff had shown him a "fairly large amount" of cocaine in the trunk of his limousine and that plaintiff had used this to supply guests at a Christmas party (10) that Lunde was planning (apparently in January, 1992) a trip to California to obtain cocaine for distribution to plaintiff's Portland contacts (11) that plaintiff had flown to Mexico to obtain some cocaine just prior to Christmas and (12) that plaintiff had told the CRI about a certain "safe house" where plaintiff and Lunde kept cocaine from their drug operation. (Affidavit ¶¶ 33-38, 43, 56-57, 67, 73, 79, 82, 94-95).

(e) Allegations attempting to corroborate the statements made by the CRI and the CRI's source

In an attempt to corroborate the CRI's

statements, Wood confirmed that Lunde does indeed own the home and vehicles described by the CRI and that Anderson is a pilot. (Affidavit ¶¶ 39-40). He also learned that Lunde, in March of 1989, was a passenger in a plane piloted by plaintiff on a trip to Mexico, and that a third passenger, Ulysses Segura, was a Columbian national then under investigation in regard to the transport and sale of cocaine. (Affidavit ¶¶ 41-42).

Wood also claimed to have conducted surveillance of Lunde's residence. That surveillance indicated that it sits at the end of a cul-de-sac and is illuminated on the outside with a high intensity light. Spot checks on the residence have shown Lunde's vehicles to come and go with great regularity, and that the Corvette will sometimes be missing for several days. (Affidavit ¶¶ 44-48). On one occasion (no date given), a female subject was observed driving back and forth in a manner described

as "consistent with counter-surveillance tactics employed by drug traffickers." (Affidavit ¶¶ 49-51). On other occasions (1) a person named Kelsey, who has a prior drug record, came to Lunde's door (2) a person matching the description of Hal Gibbs drove a third party to Lunde's house and (3) a 1977 Camaro parked briefly in the Lunde driveway, made a 15-second contact at the Lunde front door, and then drove to a local high school where approximately six other people were waiting; they congregated at the Camaro and then sped off in separate vehicles. (Affidavit ¶¶ 52-55).

Wood claims to have installed a camera on the power pole next to Lunde's residence. (Affidavit ¶¶ 58-60). The vehicle activity that Wood was then able to observe was, in his opinion, "consistent" with the actions of drug traffickers. (Affidavit ¶¶ 61-62).

Wood's investigation included review of the telephone tolls incurred by Lunde and

plaintiff. According to Wood, Lunde made a call on November 5, 1989 from Oakland to the Sunriver house. On November 7, Lunde phoned plaintiff's tavern from Mammoth, California. There were also two calls (one on each suspect's bill) only minutes apart, on November 26, from the very same telephone number in San Diego, California. Plaintiff was also shown to have called his parents from Los Angeles on December 22, and Lunde made a similar call from Los Angeles on December 18. (Affidavit ¶¶ 68-72).

Wood also indicated that plaintiff was with Lunde in a bowling alley on January 22, 1990. Additionally, plaintiff visited Lunde on January 24, left his pickup truck at the Lunde residence, and then departed with him in plaintiff's limousine. Plaintiff returned on Janaury 25, and Lunde came back by taxi on January 27. A third party, Chapman, picked Lunde up at his home 35 minutes later. (Affidavit ¶¶ 68-72).

Surveillance of the Lunde residence further revealed a visit, on January 29, by a person thought to be Gilbert Ramos, a person Wood suspected might be associated with Segura. There was also a visit on January 31 by a person in a vehicle that had been rented in part by Lunde. The rental period was consistent with a trip to California, and the use of a rental vehicle is consistent with drug sale and transport. (Affidavit ¶¶ 74-78, 88, 92). Lunde was later observed driving this vehicle on numerous short trips prior to his supposed trip to California. (Affidavit ¶ 89). When the vehicle was returned to the rental agency its mileage was consistent with a trip to California. A narcotics dog gave "strong alerts" concerning the wheel well compartment and glove box of the vehicle. (Affidavit ¶ 90).

Wood also attempted surveillance of plaintiff's Sunriver home. This revealed a

visit, in the days preceding December 24, 1989, by a vehicle owned by Anderson, the pilot. (Affidavit ¶¶ 80-81). Wood also confirmed that plaintiff owns hangars at Sunriver and Eugene. (Affidavit ¶ 83).

Wood ended his attempt at corroboration with surveillance of plaintiff's vehicles and a residence plaintiff uses at "Fern Ridge Reservoir" in Eugene. This surveillance revealed a February visit by plaintiff to the home of Pam Higgins. (Affidavit ¶¶ 84-87).

The motion to compel

After plaintiff's suit was filed but before discovery was completed, defendants filed motions for a protective order barring plaintiff from all discovery respecting any CRI used in the investigation. (CR 51 and 52). Plaintiff responded with a "Cross Motion to Compel Disclosure" which sought an order requiring defendants to "identify the C.R.I., the 'Source,' and the other unknown

defendants." (CR 577). In support of the motion, plaintiff's counsel submitted a voluminous "Declaration" of facts indicating that the Wood affidavit was filled with numerous false statements, statements that defendants made either knowing they were false or with reckless disregard for whether they were false. (CR 57).

The Declaration

(a) Fisher facts

Exhibit 13 to the Declaration was a deposition of Fisher's testimony. The deposition was taken in November of 1990 (about a year after Fisher supposedly made his statements to Wood) and included cross-examination by defendants' attorneys.

In his deposition, Fisher testified (1) that he "absolutely did not" tell Wood that plaintiff had distributed cocaine for Ainge (depo. 13) (2) that he "absolutely" did not tell Wood that methamphetamine was sold at one of plaintiff's taverns (depo. 14) (3)

that he never said the taverns were bought with drug money (depo. 14) (4) that he had did not recall saying that cocaine was kept in plaintiff's safes or (5) that lines of cocaine could be found on plaintiff's desk (depo. 15) (6) that he "absolutely" did not say anything about plaintiff flying to San Francisco to pick up 20 to 30 kilograms of cocaine or (7) distributing the cocaine to a contact in Eugene or Portland (depo. 16) and (8) that he had no recollection of telling Wood that Smith, Esperanza or Roberts were narcotics associates of plaintiff (depo. 16-17) or (9) that plaintiff used the Higgins house as a "safe house" for drugs (depo. 19). Concerning the identification of plaintiff's vehicles, Fisher indicated that he "may have" described them to Wood (depo. 20).

(b) Other facts

Also in his "Declaration," plaintiff denies involvement in any drug related activity. The statement plaintiff supposedly

made to Siel -- that he uses cocaine (Affidavit ¶ 10) -- is a statement plaintiff made about his life years ago. (Memorandum of law attached to CR 57 ¶ 8).

With respect to the CRI's allegations about drug distribution at a Christmas party (Affidavit ¶ 67), plaintiff submitted the depositions of Moul, his limousine driver (Ex. 5 to CR 57), and of Jacobsen, a person who sat at the party with plaintiff (Ex. 6), and both testified that there was no cocaine used or distributed at the party or in the limousine. Plaintiff's attorney had also accumulated affidavits from some 70 people who attended the party, and all deny the truthfulness of the CRI's accusations. (Declaration of Hansen, ¶ 12, attached to CR 57).

Concerning the general allegations supposedly made to Wood by FBI Agent Mollerup (Affidavit ¶ 12), plaintiff submitted the deposition of Mollerup, which

indicated that Mollerup had never spoken to Wood about plaintiff. (Ex. 7 to CR 57, at 7-8). Mollerup did remember a conversation with defendant Siel, but its contents were different from what was described in the Wood affidavit. (Id. at 9-10).

With respect to plaintiff's March 1989 trip to Mexico with Lunde (Affidavit ¶ 41), a search was made of the plane and luggage by customs officials, a matter that defendants never bothered to investigate. (Caro Declaration, attached to CR 57, page 16, and Ex. 2 and 3 to Declaration, Response No. 139).

Omitted from Wood's affidavit is the fact that plaintiff has a policy against drug use by employees or patrons of his taverns, has a history of reporting suspected use to Siel, and once tried to hire an officer to visit his taverns with a drug dog for routine and unannounced searches. (Declaration of Hansen, attached to CR 57, ¶ 9).

The trial court's ruling

In its minute order of November 12, 1991 (CR 64), the trial court denied the motion and forbade plaintiff to inquire about the CRI. The order was issued without opinion or other explanation. The court also held an in camera hearing on November 14, but that hearing resulted only in an affirmance of the November 12 order (CR 65). Apparently, the only witness at the in camera hearing was defendant Wood. There were no attorneys present. (RT 69).

D. District court jurisdiction

The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

ARGUMENT

(A) The issue

This is a case about government secrecy and corruption. At issue is this: Whether police officers may manufacture or recklessly collect false information, use that information to effect an illegal search, and then, when sued for violating a plaintiff's constitutional rights, shield themselves behind the "informer's privilege" and thus deny to the plaintiff all possibility of prevailing in his suit. Ultimately at issue is whether a court that is weighing the need to keep secret the identify of an informant against the plaintiff's need for access to the informer may make its evaluation in secret, without requiring the government to prove its supposed need for secrecy, and without anywhere explaining the basis for its decision.

(B) Past Supreme Court decisions

Only two cases from this Court have any

significant relevance to the issue at hand.

First is Roviaro v. United States, 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 639 (1957). In Roviaro, a criminal defendant charged with the illegal transport of drugs sought, pre-trial, to learn the identify and location of an informant who witnessed the events that led to the charge. Although the informant was not the only relevant witness, he was possibly the single witness most useful to the defense; indeed, other than the defendant himself, the informant was the only person who might have contradicted the facts as set out by the officers who effected defendant's arrest.

This Court resolved the dispute in the defendant's favor. According to the Court, the matter is to be resolved with a balancing test. It stated:

> We believe that no fixed rule with respect to disclosure is justifiable. The problem is one that calls for balancing the public interest in protecting the flow of information

> against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case * * *." Id. at 62, 77 S.Ct. at 628-29.

Although this Court gave little guidance as to how the public interest in protecting an informer compared to the individual's right to prepare his case, it did indicate that the public interest should never be given such effect that a litigant was denied all chance to make out his case. Thus, Roviaro explained:

> Where the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way." Id. at 60-61, 77 S.Ct. at 628 (emphasis added).

The second case, Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), did not involve the "informer's privilege" and thus has questionable relevance. In Franks, the defendant's convic-

tion was partly based on evidence discovered in a search of the defendant's apartment. The search had been authorized by a warrant, and the warrant supported by a police affidavit. At trial, the defense sought to attack the veracity of the statements in the affidavit, claiming they had been made in "bad faith." The trial court denied the defense all opportunity to make its challenge.

This Court reversed. Although noting that there exists a "presumption of validity" with respect to an affidavit in support of a search warrant, it also felt that the

> requirement that a warrant not issue 'but upon probable cause, supported by Oath or affirmation,' would be reduced to a nullity if a police officer was able to use deliberately falsified allegations to demonstrate probable cause, and, having misled the magistrate, then was able to remain confident that the ploy was worthwhile. Id. at 168, 98 S.Ct. at 2682.

To mandate an evidentiary hearing on the veracity of the affidavit, this Court set out the following requirements: (1) the

challenger's attack must be more than conclusory, and it must specifically identify what portions of the affidavit are claimed to be false; (2) the attack must allege the affiant's deliberate falsehood or reckless disregard for the truth; (3) it should include statements of witnesses that might serve to support the challenge; and (4) it should demonstrate that the challenged statements were necessary to a finding of probable cause. If all of these requirements are met,

> the defendant is entitled, under the Fourth and Fourteenth Amendments, to his hearing. Id. at 171-72, 98 S.Ct. at 2684-85.

Although it is tempting to apply the Franks test to a Roviaro case (i.e., a case involving an informer), the legal bases for the two cases are actually quite distinct. Roviaro tells us (1) that an "informer's privilege" exists and (2) that the privilege cannot be used to bar a litigant from access to information that is "essential to a fair

determination of a cause." Franks tells us that a criminal defendant has a limited right at a suppression hearing to question whether affiants who supported a search warrant manufactured or recklessly collected information. Except for the fact that both cases involved a government attempt to keep damaging information out of court, they have very little in common. As explained by United States v. Raddatz, 447 U.S. 667, 679, 100 S.Ct. 2406, 2414, 65 L.Ed.2d 424, 432 (1980),

> although the Due Process Clause has been held to require the Government to disclose the identity of an informant at trial, provided the identity is shown to be relevant and helpful to the defense, Roviaro v. United States, 353 U.S. 53, 60-61, 77 S.Ct. 623, 627-628, 1 L.Ed.2d 639 (1957), it has never been held to require the disclosure of an informant's identify at a suppression hearing.

(C) The Ninth Circuit decision in the present case

The present case is controlled not by Franks but by Roviaro: the issue is whether plaintiff is to have access to an informer,

not whether evidence discovered during an illegal search is to be suppressed.

Nevertheless, the Ninth Circuit Court of Appeals treated the case as if it were controlled by Franks. Its opinion nowhere cites Roviaro, relying instead on Ninth Circuit criminal cases involving a probable cause challenge under Franks. It thus failed anywhere to weigh "the public interest in protecting the flow of information against the individual's right to prepare his defense," and it never considered whether the informer was "essential to a fair determination" of the cause. Instead, it noted only that plaintiff, having been denied all access to the evidence he needed to prove his case, had produced

> no evidence Wood [the principal defendant] lied about hearing [the statements] from the informant. (Opinion (Appendix page App-3)).

(D) Application of Roviaro to the present case

The Wood affidavit is filled with state-

ments contradicted by evidence supplied by plaintiff. At issue is the truth not just of statements Wood obtained from a third source (e.g., the CRI) but also statements Wood made out of his own knowledge (for instance, statements that Fisher or Mollerup made some particular statement to Wood).

Although the accuracy of plaintiff's evidence is necessarily a question of fact -- defendants will claim, for example, that Fisher lied in his deposition -- for purposes of the motion to compel the question is not whether the trial court believes plaintiff's evidence, but whether the evidence is such that it makes the CRI's testimony "relevant and helpful" to plaintiff's case, such that it is "essential to a fair determination of [the] cause." Roviaro, 353 U.S. at 59, 77 S.Ct. at 627. The answer is yes.

The allegations in the Wood affidavit are of five kinds: (a) general allegations (b) allegations based on statements Fisher

was said to have made (c) allegations attempting to corroborate Fisher's supposed statements (d) allegations based on statements from the CRI or the CRI's source and (e) allegations attempting to corroborate the statements of the CRI. Concerning these, the following can fairly be said:

(a) The general allegations are mostly harmless and had little to do with creating probable cause. Even so, one of these allegations -- that Wood spoke to FBI Agent Mollerup and discussed with him plaintiff's attitude towards cocaine use -- was expressly said, by Mollerup, to be false.

(b) The statements supposedly made by Fisher have uniformly been said, by Fisher, not to have been said by Fisher. If Fisher is to be believed, Wood has intentionally made numerous false statements, knowing them to be false.

(c) The statements corroborating the statements attributed to Fisher are mostly

harmless and do not corroborate the portion of Fisher's statements that might help to establish probable cause.

(d) The statements supposedly made by the CRI and its source, if they are true, are extremely damaging to plaintiff. It is significant, however, that most of these statements lack all detail with respect to plaintiff's activities; it is only with respect to Lunde that the CRI has supplied detail. A notable exception concerns the statements about plaintiff's distribution of cocaine at a Christmas party. But plaintiff's evidence, which apparently includes sworn statements from some 70 people who attended the party, indicates that the CRI's Christmas party allegations are false.

(e) The statements attempting to corroborate the allegations of the CRI mostly corroborate the possible involvement of Lunde in drug trafficking. With respect to plaintiff, other than the fact that plaintiff

apparently knew and occasionally associated with Lunde, there is essentially nothing tying him to drugs.

All of this means one thing: The truthfulness of Wood (not just of the sources Wood used for information) is very much at issue. Not only do we have people telling us that they never told Wood what Wood says they told him, but we also have statements (e.g., concerning the Christmas party) about which we cannot verify whether the relevant witness (i.e. the CRI) actually made the statement to Wood, but which is necessarily suspect on account of the statement having been proved to be false.

Evaluation of Wood's veracity requires questioning his sources. If indeed the CRI told Wood everything that Wood reports, and if indeed there was no particular reason for Wood to question the statements of the CRI, the issue will be resolved in Wood's favor, and this will be so whether or not the state-

ments of the CRI eventually turn out to be accurate. But if the CRI did not, in fact, tell Wood what he says he was told, if Wood created information, exaggerated information, omitted material information, or chose not to challenge what he knew to be questionable information, plaintiff has a good lawsuit.

Access to the CRI is the only way to resolve the problem. But access has been denied. Worse still, it was denied using a standard this Court created for use at a suppression hearing in a criminal trial. The standard it mandated in Roviaro has not even been given lip service.

(E) The precedent set by the present case

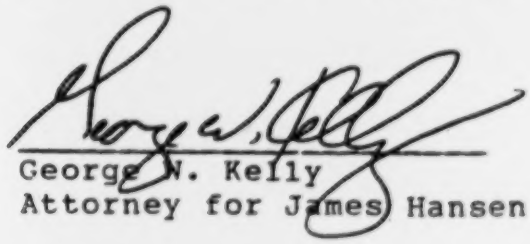
The decision of the Ninth Circuit seems to rest on its finding that plaintiff had produced "no evidence Wood lied about hearing [the statements] from the informant." (See Opinion (Appendix page App-3)). According to the court, it was not sufficient for

plaintiff to prove that at least three witnesses (Fisher, Mollerup, and plaintiff) indicated that Wood's information was false; plaintiff needed somehow to prove -- without access to the informer -- that Wood had misrepresented the information he obtained from the informer. The Ninth Circuit has asked the impossible.

And because it has asked the impossible, it has set the stage for the very evil that Roviaro sought to prevent: that a police officer could deliberately falsify an affidavit, conduct an illegal search, and know that his lies could never be discovered because the supposed source of his information -- an informer (a person who would not even need to exist) -- would never be brought to court to provide testimony.

That is not the scenario Roviaro meant to allow, and it is not what the Constitution permits. This Court should take certiorari, reverse the Ninth Circuit, and remand this

case to the District Court for a trial to take place after full discovery is provided.



George W. Kelly
Attorney for James Hansen

APPENDIX

Ninth Circuit Opinion

On March 25, 1994, in the case of James A. Hansen, plaintiff-appellant, v. State of Oregon, City of Eugene, and John C. Wood, defendants-appellees, Ninth Circuit No. 92-36557, District Court No. CV-90-6341-REJ, the United States Court of Appeals for the Ninth Circuit filed an unpublished Memorandum Opinion as follows:

Before: BROWNING, KOZINSKI, and NOONAN, Circuit Judges

A. DENIAL OF MOTION TO COMPEL DISCLOSURE

The district court did not err in denying Hansen's motion to compel disclosure of the informant's identity. The plaintiff seeking disclosure under these circumstances must 1) make specific allegations that indicate the portions of the [affidavit] he claims are false," U.S. v. Jaramillo-Suarez, 950 F.2d 1378, 1387 (9th Cir. 1991), 2)

contend the "alleged falsehoods were made deliberately or with reckless disregard for the truth," Id., 3) accompany the allegations with an "offer of proof" challenging "the veracity of the search warrant officer rather than the informant," Id. and 4) show that the "challenged statements are . . . necessary to a finding of probable cause." Id.; see also U.S. v. Kiser, 716 F.2d 1268, 1271 (9th Cir. 1983). Although the denials by Fisher and Mollerup cast doubt on Wood's veracity, the informant's statements alone were sufficient to establish probable cause. U.S. v. Ayers, 924 F.2d 1468, 1479 (9th Cir. 1991) (Corroboration of details provided by informant and fact that he had given reliable information in the past supported inference that informant's information was reliable.); U.S. v. Yarbrough, 852 F.2d 1522, 1533 (9th Cir. 1988) (Corroboration of details supported inference that informant's information was reliable.); U.S. v. Yarborough, 852

F.2d 1522, 1533 (9th Cir. 1988) (Corroboration of details supported inference of informer's reliability). Even if, as Hansen contends, the statements regarding distribution of cocaine at the Christmas party were false, there is still no evidence Wood lied about hearing them from the informant. U.S. v. Stanert, 762 F.2d 775, 783 (9th Cir. 1985) (Showing informant's information is false does not, without more, show the informant never provided the information or that the police included it in the affidavit in reckless disregard for the truth.); Kiser, 716 F.2d at 1271 ("[The party seeking disclosure of an informant's identity] must establish a negative -- that the informant does not exist -- or uncover the informant's probable identify and the text of his information despite considerable government efforts to protect both.").

There was also no error in failing to make a record of the in camera hearing.

Hansen did not make the evidentiary showing required to entitle him to such a hearing. U.S. v. Jaramillo-Suarez, 950 F.2d 1378, 1387 (9th Cir. 1991) (Party who fails to make required preliminary showing not entitled to hearing on the need for disclosure). The hearing was conducted at the Defendants' suggestion, and Hansen did not request that it be recorded.

B. ATTORNEY'S FEES

We deny the Defendants' request for attorney's fees under 42 U.S.C. § 1988. "A prevailing civil rights defendant should be awarded attorney's fees not routinely, not simply because he succeeds, but only where the action brought is found to be unreasonable, frivolous, meritless or vexatious." Patton v. County of Kings, 857 F.2d 1379, 1381 (9th Cir. 1988). Hansen's action was not completely without foundation.

AFFIRMED.

District Court Opinion

On June 22, 1994, in the case of James A. Hansen, plaintiff, v. State of Oregon, City of Eugene, and John C. Wood, defendants, U.S. District Court for the District of Oregon Case No. 90-6341-HO, the court filed the following Findings of Fact and Conclusions of Law and Order:

JONES, Judge

Plaintiff James A. Hansen filed this action against the State of Oregon, the City of Eugene, Oregon State Police Officer John Wood, Eugene Police Sergeant Rick Siel, an unnamed confidential informant and other John Doe Defendants. Plaintiff's Amended Complaint added Eugene Police Officer Rob Olson as a Defendant.

Plaintiff alleged four claims for relief: (1) A claim under 42 USC § 1983 for violations of rights secured under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution and for vio-

lation of the Privacy Act of 1974, 5 USC § 552(a); (2) a claim directly under the United States Constitution for a violation of Plaintiff's rights under the First, Fourth, Fifth and Fourteenth Amendments; (3) a state law claim for accounting and replevin; and (4) a state law claim for defamation.

By Minute Order filed March 16, 1992, Summary Judgment was granted in favor of the State of Oregon, the City of Eugene, and all Defendant John Does. Defendant Olson moved to strike Plaintiff's claims against him, and Plaintiff agreed to drop Olson from the case. It does not appear that a formal order removing Olson from the case was ever entered. However, the court and the parties understood that Plaintiff asserted no claim against Olson and, at trial, Plaintiff presented no evidence concerning any claim against Olson. Prior to the trial, Plaintiff's counsel stated on the record that Plaintiff did not intend to pursue his state

law claims. No evidence was presented concerning those claims. Thus, the only claims tried in this case were Plaintiff's § 1983 and direct constitutional claims against Defendants Siel and Wood.

Trial of this action commenced on April 13, 1992, and concluded on April 16, 1992. By stipulation of the parties, the trial was bifurcated. First, liability issues were tried to the Court. The parties and the Court agreed that if the Court found any Defendant liable on any of Plaintiff's claims, a jury would be empaneled to decide damages. After hearing the evidence, examining the exhibits and considering the arguments of the other parties, I announced findings of fact and conclusions of law rejecting all of Plaintiff's claims and entitling Defendants to judgment. This Memorandum of Decision supplements the oral findings made in open court on April 16, 1992. Taken together, my oral and written findings constitute the

Findings by the Court pursuant to Fed.R.Civ. P.52.

Plaintiff claims that Defendants Wood and Siel violated his constitutional rights while acting under color of state law. Plaintiff alleges four distinct constitutional violations. First, Plaintiff claims that Wood and Siel obtained a search warrant and conducted searches based upon an affidavit which, on its face did not establish probable cause. (Pretrial Order P. 3). Second, Plaintiff claims that Wood and Siel included materially false and materially misleading statements in the affidavit and that they did so intentionally or with reckless disregard for the truth. (Id.). Third, Plaintiff claims that Wood and Siel targeted Plaintiff for criminal investigation and conducted the investigation for the improper purpose of seeking to put Plaintiff out of business because of Defendants' moral and religious objections to Plaintiff's success-

ful operation of topless taverns and their personal dislike of Plaintiff. (Id. at 3-4). Fourth, Plaintiff claims that Defendants placed him under false arrest for approximately three hours while searching his home. (Id. at 4).

Plaintiff claims that Defendants violated his rights under the Privacy Act by obtaining uncorroborated information about Plaintiff from the Drug Enforcement Agency (DEA) without complying with the prerequisites for acquiring the information under the Privacy Act. (Id.).

A. Findings of Fact

1. The Iteragency Narcotics Enforcement Team (INET) is a task force created by an intergovernmental agreement among state and federal law enforcement agencies in Lane County, Oregon, The Oregon State Police, Lane County Sheriff's Department, Eugene Department of Public Safety, Springfield Police Department and United States Internal

Revenue Service assign personnel to work on the INET team. The City of Eugene provides administrative support for INET. Defendant Siel was the supervisor of the INET TEAM. As supervisor, it was his job to coordinate the activities of the team and to ensure that the investigations undertaken by the team received adequate administrative support. Defendant Wood was assigned to the INET team. Defendant Wood continued to report through the Oregon State Police chain of command.

2. Plaintiff is the owner of two topless taverns in Eugene. Plaintiff became acquainted with defendant Siel and and other law enforcement officers because his business brought him in contact with police authorities. Plaintiff supplied information to defendant Siel and other law enforcement officers from time to time. The information supplied by Plaintiff was not useful. On occasion, Defendant Siel received informa-

tion from various sources about drug activity in plaintiff's taverns. He also received information that Plaintiff was involved in the use and distribution of cocaine. Defendant Siel did not solicit this information, nor did he act on it. Sometime in the summer of 1989, Terry Fisher contacted law enforcement officials and stated that he wished to provide information to INET regarding the Plaintiff. At the time of this initial contact, Fisher was involved in civil litation against Hansen. INET officials decided not to meet with Fisher while the litigation was pending because they did not want to get drawn into the civil dispute and because INET was very busy with other investigations at that time. However, an investigation file was opened and Defendant Siel assigned Defendant Wood and Lane County Sheriff Detective James Powell to work on Plaintiff's file.

3. Defendant Wood proceeded with

reasonable caution in the investigation. Defendant Wood and Defendant Siel were aware of questions concerning Fisher's motives and sought additional information before proceeding beyond opening an investigation file on Plaintiff. The weight of the evidence indicated that Fisher's allegations should be investigated. Fisher was a close business associate of Plaintiff, who had known Plaintiff for many years. The disagreements that led to civil litigation between Fisher and Plaintiff were apparently recent and, although they caused the Defendants to be cautious in proceeding, they did not contradict Fisher's allegations. The information concerning Fisher, his relationship with Plaintiff and his apparent sources of information were considered by the Defendants and were set forth in detail in the affidavit prepared by Defendant Wood.

4. A confidential informant was referred to Defendant Wood by the DEA because

the informant had information concerning Plaintiff and Plaintiff's alleged drug-related activities.

5. Both Fisher and the confidential informant told Defendant Wood that Plaintiff was involved in a large scale cocaine distribution operation with a man named John Lunde. Both Fisher and the confidential informant supplied Wood with specific information regarding the activities of Plaintiff and Lunde in connection with the alleged drug operation.

6. The information supplied to Defendant Wood by Fisher and the confidential informant was not immediately accepted as true. Defendant Wood's continuing contacts with the confidential informant led Defendant Wood to conclude that the informant was reliable as an informant. Defendant Wood took action to confirm many of the specific details regarding Plaintiff that Defendant Wood had received from Fisher and the con-

fidential, reliable informant.

7. Defendant Wood kept Defendant Siel informed concerning the progress of the investigation and discussed some of the steps taken to corroborate the information provided by the informants.

8. Defendant Wood, or other police officers serving with Defendant Wood, confirmed some of the allegations made by the informants through information from the Federal Aviation Agency and the DEA.

9. After an extensive investigation of Plaintiff's activities and connections with other persons alleged to be or known to be involved in drug trafficking, Defendant Wood began to collect the information INET had gathered regarding Plaintiff and Lunde in the form of an affidavit. The affidavit served as a running catalog of information that the INET investigation had uncovered. Defendant Wood updated and revised the affidavit continually over a period of

several months as the investigation continued.

10. In December, 1989, Defendant Wood submitted the affidavit to Deputy District Attorney Richard Mullen to review for legal sufficiency. As required by local policy and practice, INET sought approval of the affidavit by the District Attorney's Office before submitting it to the Lane County District Court in connection with an application for a warrant authorizing installation of surveillance cameras on a telephone pole outside Lunde's residence. Deputy District Attorney Mullen approved the affidavit as legally sufficient for submission to the District Court. Thereafter, Defendant Wood submitted the affidavit to Lane County District Judge Ann Aiken in connection with the surveillance camera warrant application. Judge Aiken reviewed the affidavit and issued the surveillance camera warrant.

11. In January, 1990, INET sought and

obtained a warrant to install a tracking device on Plaintiff's vehicle. Defendant Wood submitted an updated and revised form of the affidavit to Deputy District Attorney Mullen, who again reviewed it and approved it for legal sufficiency. Judge Aiken then reviewed the affidavit and, based upon it, issued the tracking device warrant.

12. In February, 1990, Defendant Wood updated and revised the warrant again in preparation for an application for search warrant. Defendants Wood and Siel took the draft affidavit to the United States Attorney's office in an effort to enlist federal participation in the case. The Assistant United States Attorney sent the draft affidavit to the FBI for review and comment. The FBI agents who reviewed the affidavit reported a rumor that Fisher had recanted his allegations against Plaintiff. Defendant Wood made diligent efforts to confirm this rumor, but was unable to do so. Contrary to

FBI suggestions, there were no newspaper reports of such a recantation. In response to suggestions by the U.S. Attorney's office and the FBI, Defendant Wood made changes in in the affidavit to emphasize the facts that tended to undermine Fisher's credibility.

13. The federal authorities refused to participate in the investigation of Plaintiff and Lunde because of disagreements with INET over tactics and because of limited resources. No federal official ever expressed concern to Defendants regarding the accuracy or sufficiency of the affidavit.

14. After the federal authorities declined to participate, INET officials applied for search warrants in state court. Once again, the affidavit was reviewed by Deputy District Attorney Mullen prior to its submission to Judge Aiken. Deputy Mullen was satisfied that the affidavit established probable cause and he so advised Defendants.

15. The affidavit prepared by Defendant Wood sets forth in detail the information supplied by Fisher. The affidavit indicates which portions of the information supplied by Fisher were corroborated by independent investigation of local, state and federal authorities, which portions were confirmed or supported by statements of other persons, and which information had not been corroborated. The affidavit reveals information concerning Fisher's motivation in supplying information to the police, as well as other factors that might tend to reduce the credibility of Fisher's evidence.

16. The affidavit sets forth in detail the information supplied by the confidential reliable infomant. The affidavit reveals on what basis the infomant was determined to be reliable, and reveals information that might tend to undermine the credibility of the informant. The affidavit reveals to what extent the information supplied by the

confidential reliable informant was corroborated by independent investigation.

17. The affidavit reveals that as a result of information supplied by the informant and other, independent sources of information, Plaintiff was placed under surveillance. The affidavit also reveals that a court authorized surveillance camera and direct surveillance established a personal connection between Plaintiff and persons who were engaged in activities that clearly indicated drug trafficking.

18. The affidavit reveals other sources of information independent of either Fisher or the informant. These sources of information, including direct observation by Defendant Wood and other police officers, support the information supplied by Fisher and the informant and provide an independent basis of support for the determination of probable cause.

19. The affidavit revealed the

Plaintiff had close personal contacts with persons who were known to be involved in drug dealing and with persons who exhibited behavior indicative of drug dealing. The affidavit revealed that Plaintiff was coincidentally in California at the same time that some of his acquaintances with a known drug history were in the same part of California. The affidavit sets forth the allegations of Fisher and the confidential reliable informant concerning Plaintiff's use of cocaine and his dealing in cocaine. The affidavit sets forth corroborative evidence which supports the allegations of Fisher and the informant. The affidavit also sets forth the facts which might tend to discredit the information supplied to Defendant Wood.

20. The affidavit clearly sets forth facts from which a reasonable person would conclude that it was likely that evidence of a crime, or contraband, would be found at

the locations specified in the affidavit because these were places where Plaintiff lived, worked, or regularly visited.

21. The portions of the affidavit concerning allegations of a connection between Plaintiff and a person known as Raymond Sander Ainge were not necessary to establish a belief that there was a fair probability that contraband or evidence of crime would be found at the places specified in the warrant. I find that these allegations would not support Defendant Wood's request for a search warrant.

22. I find that these allegations do not affect the validity of the affidavit. These allegations are only a small part of a very comprehensive affidavit, and in no way influence other portions of the affidavit. Any reasonable magistrate reading the affidavit would have recognized this information related to events yeears ago and was provided merely as background. Any

reasonable magistrate would have overlooked this information and would have given it absolutely no weight. Any reasonable magistrate would have determined that evidence of a crime or contraband could be found at the specified locations even after deciding to overlook this information.

23. Testimony at trial revealed the full range of information available to Defendant Wood and Defendant Siel at the time the affidavit was prepared. I find that no material evidence was omitted from the affidavit that should have been included. I further find that no false statements or material misstatements were included in the affidavit.

24. Defendant Wood and Defendant Siel were aware of Plaintiff's business activities in Eugene, including Plaintiff's operation of two topless taverns. Defendant Wood and Defendant Siel were aware of information suggesting that one or both of

these establishments were the locus of occasional drug activity. No evidence was introduced during the trial that suggested that the decision to investigate Plaintiff was in any way related to the nature of Plaintiff's business as topless taverns, and I find that it was not so motivated. The evidence demonstrated that Defendant Wood initiated an investigation of Plaintiff because of reasonable information tending to suggest Plaintiff's involvement in the use of cocaine. Defendant Siel did not exercise improper supervisory control of Defendant Wood. Defendant Siel agreed with the investigation of Plaintiff because of the information available to both Defendant Wood and Defendant Siel which suggested Plaintiff's involvement with cocaine.

25. The affidavit setting forth Defendant Wood's information and conclusions and requesting a search warrant for specific persons and specific places was properly

drawn up and presented to an independent magistrate; Lane County District Court Judge Aiken. A search warrant was properly issued by Judge Aiken on February 26, 1990.

26. The search warrants were reasonably and properly executed on February 27, 1990. Defendant Wood and Defendant Siel were not the only officers involved in the searches, and were not present at any particular location searched for the entire time of the search. The searches in this case involved several locations and several persons. It was necessary that the searches be coordinated to make certain that no person and no place was left out of the initial search. Defendant Wood's actions and Defendant's Siel's actions in the course of the search were reasonable and appropriate given the involvement of the Defendants in the investigation.

27. Plaintiff was detained for a time during the search of his residence. Plain-

tiff was present at his residence when the residence was searched. Plaintiff's detention was related to the search and did not last the entire time of the search. There was no evidence that Plaintiff's detention for this limited time was unreasonable in light of the complex nature of the searches being executed.

28. In the course of the investigation of Plaintiff's activities, Defendant Wood contacted the DEA, seeking information from the DEA relating to Plaintiff's activities and associates. The information Defendant Wood obtained from the DEA had been gathered for the purpose of investigating drug-related activities and it was for these purposes that Defendant Wood obtained the information.

29. Defendant Wood and Defendant Siel acted at all times with the utmost good faith. The evidence clearly indicates the Defendants' intention to follow the letter

and the spirit of the law.

B. Conclusions of Law

All of Plaintiff's claims must be measured by federal constitutional standards. Plaintiff's first claim is that the affidavit prepared by Defendant Wood did not set forth sufficient facts to establish probable cause.

The standard to be applied to Plaintiff's allegations concerning the affidavit is the fourth amendment standard as set forth in Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed.2d 527 (1983). The standard is whether the issuing magistrate can make a practical, common sense decision that, given all the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. See

U.S. v. Lai, 934 F.2d 1414, 121 (9th Cir. 1991) (the totality of the circumstances must indicate that there is a fair probability that evidence or contraband will be found).

The propriety of the warrant is reviewed according to the sufficiency of the information contained within the four corners of the written affidavit. U.S. v. Holzman, 871 F.2d 196, 1511 (9th Cir. 1989). Measured by the Illinois v. Gates standard, the affidavit contains all that can be expected or demanded of any affidavit. No affidavit need contain every detail of the investigation, and the fact that additional details concerning the investigation were revealed during the trial does not undermine the validity of the affidavit. The affidavit sets forth the information derived from the informants, corroborative information to support the informants, the important items of infor-

mation which might tend to discredit or reduce the credibility of the informants, and additional details derived from sources independent of the informants. Taken together all the information in the affidavit clearly demonstrates probable cause. In fact, this very thorough affidavit fairly screams out probable cause. I find that this affidavit met the standard of probable cause set forth in Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed.2d 527 (1983).

Plaintiff also alleged that his constitutional rights were violated because the affidavit contained material misstatements and omitted material information. There is a presumption that the affidavit was valid and did not contain false statements or omissions of fact. Plaintiff has the burden of overcoming that presumption with sufficient proof that the Wood affidavit contained false statements or omissions of

and that these misstatements or omissions were made deliberately or with reckless disregard for the truth. Forster v. County of Santa Barbara, 896 F.2d 1146 (9th Cir. 1990). "Reckless disregard for the truth" means that the police officer in fact entertained serious doubts about the truth of the affidavit. DeLoach v. Bevers, 922 F.2d 681 (10th Cir. 1990) cert. denied, 112 S. Ct. 62 (1991); United States v. Williams, 737 F.2d 594 (7th Cir. 1984), cert. denied, 475 U.S. 1002 (1985); United States v. Davis, 617 F.2d 677 (D.C. Cir. 1979), cert. denied, 445 U.S. 967 (1980).

The allegedly false statements or omissions must have been material to the determination of probable cause before their presence makes the affidavit and the warrant invalid. U.S. v. Ippolito, 774 F.2d 1482 (9th Cir. 1985). Even if the plaintiff proves the officer deliberately or recklessly made false statements of material

fact or omitted material facts, there is no liability if the affidavit establishes probable cause with the omissions filled in and the false statements deleted. Mills v. Graves, 930 F.2d 729, 733 (9th Cir. 1991); Forster v. County of Santa Barbara, supra, 896 F.2d at 1148.

In this case, Plaintiff did not prove that there were any material misrepresentations or omissions of fact. I find beyond any reasonable doubt that Defendant Wood and Defendant Siel did not intentionally distort any facts nor recklessly make any statement not based on fact. The affidavit is complete and sufficient. The affidavit did contain some antiquated information about the Ainge matter but this does not lessen the validity of the affidavit. I am convinced that any reasonable magistrate would have been able to overlook that material and would still have found that the affidavit contained an adequate statement of probable cause.

This is not an affidavit that is at all close to the boundaries of probable cause. Even if all the information that plaintiff sought to question were omitted and all the additional information were included, the affidavit would still have set forth sufficient probable cause to justify issuing a warrant. There was no violation of the Plaintiff's rights under the standards of Forster v. County of Santa Barbara, supra, 896 F.2d 1146.

Defendants raised the affirmative defense of qualified immunity. I find that Defendants would be entitled to qualified immunity against Plantiff's claims for a violation of his Fourth and Fourteenth Amendment rights. The Defendants are entitled to immunity if they can show that a reasonable officer could have believed the Defendants' actions to be lawful in light of clearly established law and the information the officers possessed. Anderson v. Creighton,

483 U.S. 635, 107 S. Ct. 3034, 97 L.Ed.2d 523 (1987).

In reviewing the nature of established law at the time, the court has looked outside the circuit as well as at cases decided in the Ninth Circuit. Lum v. Jensen, 876 F.2d 1385 (9th Cir. 1989), cert. denied 110 S.Ct. 86 (1990). It has not been necessary to engage in the balancing of non-binding precedents, because Plaintiff has not come forward with any cases showing that any of Defendants' actions violated clearly established law. Plaintiff has the burden of coming forward with evidence that the law was clearly established. Elder v. Holloway, 951 F.2d 1112 (9th Cir. 1991).

Defendants have shown that there was no violation of Plaintiff's rights. Plaintiff has failed to show that the rights he claims were violated were clearly established at the time. No reasonable officer could have believed that there was a violation of

clearly established law and therefore Defendants are entitled to immunity for their actions. Defendants have further shown that they are entitled to immunity under the doctrine of Malley v. Briggs, 45 U.S. 335, 106 S. Ct. 1092, 89 L.Ed.2d (1986). The affidavit was reviewed by a deputy district attorney and an independent magistrate who approved the statement of probable cause. In fact, including earlier versions of the affidavit submitted in connection with earlier warrant applications, the affidavit was reviewed by the court and by legal counsel three times. It also was reviewed by the FBI and the U.S. Attorney's Office. No one ever raised a question with these Defendants regarding the accuracy or sufficiency of the affidavit. Defendants had no knowledge of facts that were misstated or improperly omitted. The warrant was not so lacking in indicia of probable cause as to render be-

lief in the existence of probable cause unreasonable by the Defendants and they are therefore entitled to immunity.

In this case, the officers showed the utmost good faith in confirming the validity of their warrant. These actions were evidence of the officers' subjective good faith and the objective good faith needed to show the officers are entitled to immunity. The Defendants made a good faith effort to obtain the independent review of several reliable sources. In addition to seeking independent cooroboration of their information from federal officers, the Defendants obtained the review of the Lane County District Attorney. Seeking this independent review of the affidavit makes the officers' actions objectively reasonable and entitles them to immunity. Ortiz v. Van Auken, 887 F.2d 1366 (9th Cir. 1989); Los Angeles Police Protective League v. Gates, 907 F.2d 879 (9th Cir. 1990). The

evidence is clear that Defendants reasonably believed the truthfulness of the allegations in the affidavit and therefore Defendants are entitled to immunity. Mills v. Graves, 930 F.2d 29 (9th Cir. 1991).

Plaintiff also alleged that Defendants had violated his First Amendment rights because the investigation into his narcotics dealings was motivated by Defendants' dislike of his business practices. Plaintiff assumed without showing that his First Amendment rights were involved because he owned taverns where people performed topless dances. If Plaintiff had a First Amendment right to run these taverns, Plaintiff would have to show that his rights were interfered with as a result of Defendants' conduct. Where there has been no interruption to expressive or business activites, there has been no violation of First Amendment rights. Reichenberger v. Pritchard, 660 F.2d 280 (7th Cir. 1981). To show that his First Amendment rights were

violated Plaintiff would have to show that he was the subject of an agency investigation which had no lawful purpose and which resulted in a substantial adverse impact. Abrams v. City of Chicago, 635 F. Supp. 169, 173 (N.D. Ill. 1986) citing Philadelphia Yearly Meeting of the Religious Society of Friends v. Tate, 519 F.2d 1335, 1338-39 (3d Cir. 1975); Berlin Democratic Club v. Rumsfeld, 410 F.Supp. 144, 151 (D.D.C. 1976); Clark v. Library of Congress, 750 F.2d 89, 94-95 (D.C. Cir. 1984).

Plaintiff failed to prove any of these matters. In addition to failing to prove that his First Amendment rights were implicated, Plaintiff failed to prove that there had been any interference with the operation of his business or his freedom of expression. Plaintiff also failed to prove that the Defendants wished to interfere with his First Amendment rights. Defendants did not intend to interfere with any of Plain-

tiff's freedom of expression rights by investigating into Plaintiff's connection with drug trafficking. Where there is no intent to deprive a person of his constitutional rights there is no violation. McCarthy v. Mayo, 827 F.2d 1310, 1315 (9th Cir. 1987).

Defendants are entitled to qualified immunity from Plaintiff's claims of a violation of his First Amendment rights. Given the information that the Defendants had available to them, no reasonable officer would have believed that he would violate Plaintiff's First Amendment rights by carrying out an investigation such as the one carried out by the Defendants.

Plaintiff did not show that it was clearly established that Plaintiff has a First Amendment right to operate topless taverns where liquor is sold. The Supreme Court has held that whatever artistic or communicative behavior there is in topless dancing, it may be regulated or prohibited

under the state's authority granted by the Twenty-First Amendment to the Constitution. New York State Liquor Authority v. Bellanca, 452 U.S. 714, 101 S.Ct. 2599, 69 L.Ed. 357 (1981); Accord, City of Newport v. Iacobucci, 479 U.S. 92, 107 S.Ct. 383, 93 L.Ed.2d 334 (1986) (cities may regulate nude dancing). Because it iis not clearly established that an investigation which interfered with the operation of topless taverns would violate First Amendment rights, and because it is clear that these Defendants were not motivated by the character of Plaintiff's business, Defendants are entitled to qualified immunity on Plaintiff's First Amendment claims.

Plaintiff also contended that his rights were violated when he was handcuffed during the search of his home. The right to execute a search warrant carries with it a limited authority to detain the coocupants while the search is being carried out.

Michigan v. Summers, 452 U.S. 692, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981). There must be a reasonable suspicion to justify a detention. This reasonable suspicion may be based on a search warrant. U.S. v. Prieto-Villa, 910 F.2d 601, 605 (9th Cir. 1990). In this case, Defendants had a warrant and reasonable suspicion that Plaintiff might be involved in drug-related activities.

The Defendants' conduct in detaining Plaintiff, to the extent that they were involved in the detention, was reasonable. Plaintiff was suspected of being involved in a large smuggling operation involving many locations and several people. Plaintiff could not be allowed to wander from place to place or contact other people during the early part of the search. Plaintiff offered no evidence that his detention was not reasonable. I conclude that Plaintiff's detention during the search was reasonable.

Further, Defendants are entitled to

immunity for their actions in detaining Plaintiff. It is clearly established law that some detention is permitted. The exact confines of what period of what type of detention is reasonable are not yet established. See U.S. v. Prieto-Villa, supra. In United States v. Price, 888 F.2d 1206 (7th Cir. 1989) the court held that there was no violation when a naked defendant was forced at gunpoint to lie on the floor for several minutes and thereafter detained at the location during a search for firearms. If this sets the boundaries of reasonable detention, then Plaintiff's detention in this case was clearly within the confines of established law. No reasonable officer would have believed that Plaintiff's clearly established rights were being violated by his detention.

Plaintiff alleged a claim for relief under 42 U.S.C. § 1983 for a violation of the Privacy Act of 1974, 5 U.S.C. § 552a,

relating to the release of information to Defendant Wood by the DEA. There is no validity to this claim. The Privacy Act allows the release of information for a routine use of the record for purposes compatible with the purpose for which it was gathered. 5 U.S.C. § 552a(b)(3). One of the routine uses authorized by regulation is the release of the information to state and local agencies engaged in the enforcement of laws related to controlled substances. 28 C.F.R. § 103. There was no violation of the Privacy Act. Furthermore, 42 U.S.C. § 1983 does not give the Plaintiff a cause of action if there had been a violation. The Privacy Act, 5 U.S.C. § 552a(g)(1) provides that the exclusive remedy for a violation is a suit against the agency. Plaintiff has not named the right party or brought the right kind of action to remedy a violation of the Privacy Act, even if there had been such a violation. Schowengerdt v. General

Dynamics Corp., 823 F.2d 1328 (9th Cir. 1987).

In addition to his claims under 42 U.S.C. § 1983, Plaintiff alleged the same claims for violations of his constitutional rights directly under the Federal Constitution. Plaintiff cannot bring those claims because he has the right to bring suit under § 1983. Ward v. Caulk, 650 F.2d 1144 (9th Cir. 1981). Furthermore, for all the reasons stated above, Defendants are not liable for any alleged violation of Plaintiff's constitutional rights because there was no violation and because the Defendants would be immune.

Based on all the foregoing, IT IS HEREBY ORDERED, that judgment be entered in favor of Defendants.

Affidavit in Support of Warrant

The affidavit stated:

I, John Wood, being first duly sworn on oath, hereby depose and say:

1. That I am a police officer employed by the Oregon State Police and have been so employed for the past 17 years.

2. For the past 6 years, I have been assigned to the Criminal Division at the Springfield office of the Oregon State Police, the last 3 years being assigned to the Interagency Narcotics Enforcement Team (INET), and have been involved in several narcotics investigations that involved the distribution, and use of the controlled substance cocaine.

3. I have received in excess of 200 hours of specialized instruction on recognizing controlled substances and the enforcement of controlled substance laws from the Oregon Board of Police Standards and Training, the Oregon State Police Basic

Academy, Advanced Oregon State Police in-service schools, Oregon Narcotics Enforcement Association seminars, Western States Information Network seminars, and the United States Drug Enforcement Agency School in Illicit Laboratories.

4. I have further, because of my schooling and my experience as a police officer, become conversant with the practices of those individuals dealing in the illegal possession and selling of the controlled substance cocaine. I have further, on numerous occasions, had my street identification of controlled substances confirmed by criminalists of the Oregon State Police Crime Laboratory.

5. For the past several months, I have been involved in a joint investigation with Agent Bruce Kramer of the Criminal Division of the United States Internal Revenue Service regarding a large scale, complex, narcotics distribution organiza-

tion that involves JAMES ANDREW HANSEN and ROGER DEAN LUNDE.

6. I know that JAMES HANSEN HANSEN is the owner of Jiggles Tavern located at 2165 West 11th Street, Eugene, Lane County, Oregon, which is further described as being light colored brick building with redwood stained wood trim, located on the north side of West 11th Street, directly west of Waremart Foods, and having the numerals "2165" affixed to the southwest corner, and a "Jiggles Tavern" sign displayed at the entrance off West 11th Street. And that HANSEN also owns the Alaska Bush Company located at 1030 Highway 99N, Eugene, Lane County, Oregon, which is further described as a concrete block constructed building, pale yellow and blue in color with brown wood trim, located on the west side of Highway 99 between the intersections of Royal Avenue and Fairfield Avenue, and being surrounded on three sides by the

storage units of "A Attic Store N' Lock," with an "Alaska Bush Company" sign at the entrance off of Highway 99. I further know that both establishments are topless night clubs that have been reported to have alleged narcotics activity.

7. During the course of that investigation, I have accumulated the following information;

8. That I have talked with Sergeant Rick Siel of the Eugene Police Department, and Officer Rob Olson of the Eugene Police Department, and have been told by them that JAMES ANDREW HANDSEN was residing with, and an associate of, Raymond Sander Ainge during a period of time in 1981/1982 when Ainge was the subject of an extensive cocaine distribution investigation, which resulted in the successful prosecution of Ainge.

9. That I learned from the Eugene, Oregon office of the United States Drug

Enforcement Administration (DEA), that during the above investigation of Raymond Ainge, a Confidential Informant for DEA had given a list of names of persons alleged to be distributing cocaine for Raymond Ainge. One of the names on that list was JAMES ANDREW HANSEN.

10. That I further learned from Sergeant Rick Siel that during his 9 years of narcotics related enforcement work with the Eugene Police Department, he has on numerous occasions, received anonymous information regarding JAMES ANDREW HANSEN's alleged involvement with cocaine use and distribution, and has been told by JAMES HANSEN that he does engage in the personal use of cocaine.

11. That Sergeant Rick Siel also advised me that JAMES HANSEN has continued to contact him on what he referred to as "fishing expeditions" where HANSEN has displayed a great deal of knowledge

regarding narcotics activity and showing a definite awareness of persons associated with the narcotics activities in the Lane County area, but never releasing any information that is of any evidentiary value, or usable in an affidavit for a Search Warrant. Sergeant Siel advised that oftentimes, HANSEN's contact would be in response to information that HANSEN has received regarding a possible investigation into the HANSEN operations, and gives the appearance of being totally cooperative, while not actually supplying any usable information.

12. That I have talked with Special Agent Norm Mollerup of the Eugene office of the Federal Bureau of Investigation, and that he informed me that JAMES HANSEN has been contacting him periodically, and providing vague narcotics information, while not supplying any usable, or specific information. Special Agent Mollerup

further advised that JAMES HANSEN had told him that everybody in Eugene uses cocaine for personal use, and gave the impression that HANSEN felt that nothing was wrong with that.

13. That Trooper Steve Lane, while assigned as dispatcher at the Springfield office of the Oregon State Police, received an anonymous call at 11:30 a.m., September 24, 1988, advising that JIM HANSEN, the owner of Jiggles Tavern and the Alaska Bush Company, was operating a silver and black Chevrolet Suburban four-wheel drive vehicle, and that HANSEN carries 1/4 ounce of cocaine with him. The caller advised that the cocaine is usually on the person of a female passenger, or secreted under the sheep skin seat covers. The caller further advised that HANSEN has an addiction to cocaine, and that HANSEN carries a gun and a "scanner" with him and has friends on the Eugene Police Department.

14. That I know that JAMES ANDREW HANSEN did operate, and still does operate a silver and black 1985 Chevrolet four-wheel drive Suburban, bearing Oregon license PSQ-274, that is registered to JAMES A. HANSEN. I have also received information from varied sources that JAMES HANSEN mentions the name of Sergeant Rick Siel as a "personal friend" when talking to associates, in an effort to advance HANSEN's own motives.

15. That I was contacted by Terry Michael Fisher, an associate of HANSEN, and a party in a lawsuit against HANSEN, and advised that he wanted to provide narcotics information to INET regarding HANSEN. As the trial was still in session, Fisher was advised to re-contact INET upon completion of the trial.

16. I was contacted by Fisher in September 1989 and was informed by Fisher that he had known JAMES ANDREW HANSEN for

more than a decade, and that he knew HANSEN to be a distributor of cocaine for Raymond Ainge in 1981/1982. Additionally, that HANSEN had been the owner of the Haufbrau Restaurant, which I know to be the same as what is currently the Alaska Bush Company, and that a great deal of methamphetamine sales had occurred at that location. I was advised by Sergeant Rick Siel that during June through November, 1988, he received information from a Robert Massengill that the Haufbrau Restaurant was one where he purchased and sold methamphetamine. Additionally, Massengill advised Sergeant Siel that while he did not know the name of the owner of the Haufbrau Restaurant, he did know that the owner was aware of the drug activity in the restaurant. Fisher further advised that HANSEN currently owns and operates both Jiggles Tavern and the Alaska Bush Company, which Fisher alleges were both purchased with narcotics money. Fisher

stated that HANSEN had been known to keep a supply of cocaine in the office safes at both locations. The office at Jiggles will oftentimes have lines of cocaine on the top of the desk, and that HANSEN always kept a gun in the desk drawer. Further, that the main supplier of cocaine for HANSEN was a subject in the San Francisco Bay Area that owns an audio/video company and installed the equipment in the Alaska Bush Company.

17. According to Fisher, HANSEN flies his own plane to the Bay Area every couple of weeks to pick up 20 to 30 kilograms of cocaine, and that the cocaine is then taken either to the HANSEN residence in Sunriver, Oregon, where a portion of it is distributed to a Portland, Oregon contact, or to the Eugene area. Fisher related to me that some of HANSEN's narcotics related associates are: Jack Smith, approximately 39 years of age, who was a bartender for HANSEN, a Jack Esperanza, approximately 35 years of

age who worked at the Puff City USA used car lot, and Rob Roberts, an ex-connection for HANSEN's cocaine.

18. That Fisher further stated that HANSEN has two hangars at Mahlon Sweet Airport in Eugene, one for his airplane and one for storage of "his toys," and that HANSEN also has a hangar in Sunriver, Oregon. Fisher further advised that JAMES HANSEN has been having an affair with a female subject known to Fisher as Pam Higgins, and that Higgins owns a business called Sunshine Deli. Additionally, that Higgins provides a "safe house" location for HANSEN's narcotics, however it was not known if the "safe house" location was at the Higgins business address, or at the Higgins residence.

19. HANSEN's vehicles were described by Fisher as being a black 1987 Corvette, a silver-and-black Chevrolet Suburban, a blue 1984 Celebrity station wagon and a 1987

Suzuki Samari.

20. I have been able to confirm through local police records that a Jack Ray Smith, date of birth 01-10-50 (39 years), was in fact employed by JAMES HANSEN at the Jiggles Tavern in 1987. That Jack Alfredo Esperanza, date of birth 09-02-51 (38 years), worked at Puff City USA used car lot. That Robert (Rob) Edward Roberts, date of birth 05-20-54 (34 years), lived at 2710 Onyx Street, Eugene, Oregon, which is a property owned by JAMES HANSEN, and that Roberts has a prior criminal arrest record for Possession of a Controlled Substance.

21. A check of law enforcement records also revealed that Pam Joyce Higgins, date of birth 08-05-53 (36 years), is the owner/operator of Sunshine Deli Service, located at 195 Hillview #1, Eugene, Lane County, Oregon, and that Higgins resides at 3941 N. Clarey, Eugene, Lane County,

Oregon. That Pam Higgins, same date of birth and address, was a passenger with JAMES HANSEN, when his airplane returned from Canada on November 2, 1989, where they reportedly attended a Rolling Stones concert together. On February 2, 1990, at 9:20 P.M., I observed HANSEN drive his red Chevrolet pickup to the Higgins residence on N. Clarey, and place his vehicle into the garage. Sergeant Rick Siel advsied me that HANSEN had told him that HANSEN was going to marry Pam Higgins when the divorce with his current wife is final.

22. That I have further been able to confirm through the Oregon Department of Motor Vehicles records that JAMES A. HANSEN is the registered owner of a 1987 Corvette bearing Oregon license PZB-904, a 1985 Chevrolet Suburban bearing Oregon license PSQ-24, a 1984 Chevrolet Celebrity station wagon bearing Oregon license QEH-832, a 1985 Chevrolet pickup truck bearing Oregon

license NJB-626, and is the legal owner of a 1987 Suzuki Samari bearing Oregon license PTQ-873, which is registered to a Les L. Barnes of 4186 Wendover, Eugene, Oregon. A check of the local records revealed that a Lezlie Lou Barnes, DOB 05-06-59, resides at 90172 Shore Lane, Eugene, Oregon, and I have information from the CRI that Lezlie Barnes (AKA Les Barnes), is the manager at Jiggles Tavern, and is currently living with HANSENs brother-in-law on Oakleigh Lane, Eugene, Oregon. I have personally observed the Suzuki Samari, the Chevrolet Suburban, the Celebrity station wagon, and the red Chevrolet pickup parked in the alley behind Jiggles Tavern on numerous occasions. I have further observed the Suzuki Samari parked at 115 Oakleigh Lane, Eugene, Oregon, on several occasions, and during varied hours of the day and night. This is the residence of George Richard Bomareto, the brother-in-law of HANSEN.

23. That I have also confirmed that JAMES HANSEN has two hangars at Mahlon Sweet Airport, and that I have learned from Officer Kathy Flynn, of the Eugene Police Department, that on September 19, 1989, she responded to an audible alarm at one of the HANSEN hangars at Mahlon Sweet Airport, which she advised was located at 90676 Lockheed Drive, #15. Officer Flynn advised that JAMES HANSEN responded to the alarm location, accompanied by a Peter Anderson, and that a James Carl Jensen was the cause of the alarm and that the hangar was being used for storage of a ski boat that belonged to Jense, and assorted other items.

24. That I became aware, through media coverage, of a civil trial that was held in the Lane County Circuit, before the Honorable Judge George J. Woodrich, between JAMES A. HANSEN (plaintiff) and TERRY M. FISHER (defendant).

25. That I have examined a partial transcript of witness testimony from the aforementioned civil trial, and although the trial was based on allegations by HANSEN regarding Fisher's failure to prepay a loan, testimony revealed a continuing lifestyle based on cocaine use.

26. The following is information obtained from the partial transcript:

Witness Keith Newbill testified under oath that JAMES ANDREW HANSEN had purchased, and was delivered an 1/8th ounce of cocaine directly from Newbill on one occasion, and had indirectly sold cocaine to JAMES HANSEN on other occasions.

Witness Duane Cameron Calkins testified that he had obtained cocaine on at least two occasions, at the direction of, and sold to, JAMES HANSEN, and that HANSEN was in the company of Terry Fisher, and was driving a white limousine that allegedly belonged to HANSEN.

Witness Pam Higgins testified under oath that she was the owner of the Sunshine Deli Service, and is a friend of JAMES HANSEN.

27. A check with the Oregon Department of Motor Vehicles shows that JAMES A. HANSEN is the registered owner of a 1986 Lincoln limousine, that I have personally observed to be white in color, bearing Oregon license EXEC 5.

28. On February 5, 1990, I was informed by Special Agent Jerry Wilson of the Federal Bureau of Investigation, that he was present when JAMES HANSEN contacted Special Agent Norm Mollerup, and stated that Terry Fisher had publicly recanted the trial testimony regarding HANSEN's involvement in narcotics.

29. A copy was obtained of the Lane County Circuit Court document entitled PLAINTIFF/DEFENDANT JAMES HANSEN'S CLAIM TO BOND MONEY, case number 16-88-092-86 dated

December 7, 1989, including an affidavit of Terry Fisher wherein Fisher admits defrauding HANSEN by selling two automobiles belonging to HANSEN and not paying the proceeds to HANSEN. Fisher's affidavit was made pursuant to a settlement agreement made between Fisher and HANSEN, and did not contain any retraction pertaining to HANSEN's alleged narcotics involvement.

30. Additionally, Detective Steve Swenson of the Springfield Police Department and assigned to INET, conducted a check of the files of The Register-Guard newspaper, wherein no article was located that contained a retraction of any kind, or any article regarding the lawsuit that was dated beyond the conclusion of the civil trial. Detective Swenson further established telephone contact with Eric Mortenson, the reporter who covered the HANSEN/FISHER trial for The Register-Guard. Detective Swenson advised me that Eric

Mortenson had no knowledge of any retrac-traction, public or otherwise, made by Fisher.

31. I was informed by Sergeant Siel that on November 13, 1989, he was contacted by HANSEN at the Eugene Polic Department, and was advised that Fisher had contacted HANSEN regarding arrangements to renegotiate a settlement. Sergeant Siel told me that HANSEN had told him that Fisher was unable to meet the payment schedule set by the court, and wanted to make other arrangements. Additionaly, HANSEN advised Siel that Fisher had told HANSEN that "the police had contacted him" and that he had told them all about HANSEN's drug operation. HANSEN further advised Sergeant Siel taht he had worked out a settlement with Fisher, and that they are on friendly terms again.

32. Because of the establishment of a friendship between HANSEN and Fisher, the fact that Fisher told HANSEN about the

discussion with the police, and the settlement that included a partial retraction of statements, I made no attempt to recontact Fisher regarding the retractions due to the potential of jeopardizing the investigation, due to the corroboration by the testimony of Keith Newbill regarding HANSEN's drug involvement, and that many of Fisher's statements were corroborated by independent police investigation.

33. During the investigation I have had a Confidential, Reliable Informant, hereafter referred to as CRI maintaining contact with me on a regular basis, and furnishing me with information regarding HANSEN and LUNDE. The CRI has told me that he has known ROGER DEAN LUNDE for several years, and knows that LUNDE is involved with JAMES HANSEN in the illegal transportation, and delivery of the controlled substance-cocaine, and the CRI has obtained the following information through his own association with LUNDE and

from an unwitting source closely affiliated with LUNDE.

34. That Lunde is unemployed, lives at 5135 Barger Drive, Eugene, Oregon, which he owns, but that while separated from his wife, Lunde resided at 11 Otter Lane, Sunriver, Oregon, which is a house owned by JAMES ANDREW HANSEN, of Eugene, Oregon.

35. Further, that in addition to the Barger Drive residence, that LUNDE owns, and operates, a white and yellow 1988 Chevrolet Corvette, and a white 1986 Chevrolet S-10 Blazer.

36. That LUNDE had a building contractor from Bend, Oregon, by the name of Pete Anderson, build an addition onto the Barger Drive residence, and that a concealed safe was built into the floor for the purpose of protecting narcotics, and the proceeds from the sales of said narcotics. Also, that LUNDE and Anderson have a large indoor marijuana grow some-

where.

37. Additionally, the CRI told me that Pete Anderson is an airplane pilot who flies LUNDE south to California to meet with a cocaine connection.

38. I was further informed by the CRI that a white male adult, approximately 33 years of age, by the name of Hal Gibbs, was a dealer for LUNDE.

39. I have been able to confirm the above information as follows:

A check of the Lane County Tax Records revealed that 5135 Barger Drive, Eugene, Oregon is owned and occupied by Roger and Bonnie Lunde.

A check with the Deschutes County Tax Records revealed that 11 Otter Lane, Sunriver, Oregon is owned by Howard Hansen (father of James Hansen), however a check of the local utilities shows the power and telephone at that location is in the name of James Hansen.

A check of the Oregon Department of Motor Vehicles indicates that ROGER LUNDE is the only registered owner of a 1988 Chevrolet Corvette, Oregon license QGB 819, and is a co-registered owner, with his wife Bonnie, of a 1986 Chevrolet S-10 Blazer, Oregon license FXL 906. I have personally observed both of these vehicles to have been parked at the Barger Drive location, and have observed subject LUNDE to have been operating each of the above described vehicles. On one occasion, I observed LUNDE operating the Corvette westbound on Highway 126 East, which would be consistent with a return route from the Bend, Oregon area.

A check of state and local records revealed a Peter John Anderson, formerly of 11 South Alder, Eugene, Oregon, and currently residing in the Bend, Oregon area, had been a licensed building contractor in the Eugene, Oregon area, however, his

contractor's license expired in 1980. A check with the Federal Aviation Administration showed that Peter J. Anderson was a licensed pilot, however, the record indicated that his medical certificate had expired. Additionally, Oregon State Aeronautics had no records regarding Anderson.

A check of the local law enforcement database revealed an Assault Fourth Degree investigation wherein Peter John Anderson was the alleged victim. In reviewing the report, I found that Anderson advised the reporting officer that he had been employed Northwest RV Sales from April 1988 to September 1988 for the purpose of doing remodeling work at the business, and as a pilot for the business airplane.

40. In addition to the above corroboration of the information supplied by the CRI, I know the above-mentioned CRI to be reliable because:

a) The CRI has, on numerous occasions,

provided me with detailed information regarding persons involved in the use and distribution of cocaine. This information has either been corroborated by me, or was information that I knew to be true, but that the CRI could not have been aware that I knew.

b) I know that the CRI is familiar with the controlled substance--cocaine, and other drugs, because of the knowledge that he/she has displayed during conversations with me, and the persons that the CRI associates with, that I know are active in the use of cocaine.

c) That the CRI has, on two occasions, purchased cocaine from a subject associated closely to LUNDE.

41. In addition to the information that the CRI has provided, a check with the United States Customs Service revealed that ROGER LUNDE was a passenger in an airplane piloted, and owned by JAMES HANSEN that

crossed the Mexican border, into California, on March 25, 1989 at 12:40 A.M., and that the only other passenger on board was Ulysses Segura, a Columbian national. I effected a telephone contact with Special Agent Baldocchi, an agent with the San Francisco office of the United States Drug Enforcement Administration, and was advised by Special Agent Baldocchi that Ulysses Segura was a suspected Colombian connection for the controlled substance--cocaine, and that Segura had supplied Special Agent Baldocchi with five ounces of cocaine, free of charge, while in negotiations for a 50-kilogram purchase.

42. The 50-kilogram transaction was not completed due to the arrest of subjects associated with Segura which made Segura wary of the Special Agent.

43. Additionally, I have been informed by the CRI that HANSEN and LUNDE have Columbian connections in the southern

California area, and that is the source of the cocaine.

44. I have personally observed the residence located at 5135 Barger Drive, Eugene, Oregon, which is further described as being a two-story residence of wood construction, grayish blue in color, with a composition roof, and a white garage door, which was installed on February 15, 1990, to replace an unpainted piece of plywood that had been in place. That the residence faces south, on the north side of a cul-de-sac that is a continuation of Barger Drive, and that intersects with Barger Drive from the north, and that said residence is bordered on three sides by a wood fence, approximately six feet in height, and is the only building located on the circular portion of the cul-de-sac, surrounded on all sides by vacant lots. Additionally, that the area around the residence is illuminated by a high inten-

sity "farm style" yard light.

45. Located southwest of the residence, on the northest corner of Barger Drive and Terry Street is an electric power pole, approximately 30 feet in height, that belongs to the Eugene Water and Electric Board (EWEB), 500 East 4th Street, Eugene, Oregon 97401, which supplies the power to 5135 Barger Drive.

46. In the absence of a suitable location to survey the LUNDE residence, I, along with other members of INET, have conducted spot checks on the residence, which have revealed the following:

47. That both the yellow Corvette and the white Blazer come and go with great regularity.

48. That the Corvette will be missing for several days at a time, in support of frequent visits to Sunriver, Oregon.

49. That on one occasion, an attempt was made to make a visual observation of

the white Blazer as it was seen leaving the residence, operated by a female subject matching the description of Bonnie Lunde, and that the vehicle was driven a short distance to a Dari-Mart store and parked. The female operator then left the vehicle on foot, and walked back to the residence. Upon returning to the vehicle approximately 20 minutes later, the female sat in the vehicle for about five minutes, then drove to Terry Street, turned around at Astove Street, and returned to the Barger Drive residence, and entered the house.

50. Upon leaving the residence, the female drove to the Dari-Mart, then drove to the dead end of Minnesota Street, turned around and returned to the 5135 Barger Drive. Six minutes later, the female left in the Blazer again and drove through the parking lot at the Dari-Mart, and continued to the Albertson's Market at the intersection of Barger Drive and Echo Hollow,

where she made a telephone call from a pay phone. The female then drove west on Barger then proceeded back to the residence, parking in the street. Approximately, 20 minutes later, the female moves the vehicle from the street, into the driveway. About 20 after the vehicle was moved, a 1981 Datsun was observed to arrive at 5135 Barger Drive, and a white male subject contacted the female at the front door for approximately 30 seconds, and then left.

51. The previously described movements by the female subject are consistent with counter-surveillance tactics employed by drug traffickers.

52. On another occasion, a Kevin William Kelsey was observed to contact the front door of the residence, and then leave without any apparent contact with the occupants. A check of the local records revealed that Kelsey has a prior criminal history of manufacture/delivery of a

schedule I controlled substance. A positive identification was made with the aid of a color photograph obtained from the files at the Eugene Police Department.

53. And on another occasion, a 1975 Ford pick-up truck Oregon license QEH 598, operated by a white male matching the description of the registered owner, Hal Dale Gibbs, was observed to drop a subject off at 5135 Barger Drive. In addition to the information provided by the CRI that Gibbs was a dealer for LUNDE, a check of local records found that Hal Dale Gibbs has a prior criminal history of criminal activity in drugs from 1974 to 1981.

54. On one other occasion, a 1977 Chevrolet Camaro, Oregon license PDW 089, was observed to park in the driveway of 5135 Drive, during the hours of darkness with the vehicle lights extinguished. A male subject opened the hood, and contacted the front door of the residence for less

than 15 seconds.

55. The hood was then closed, and due to the backup lights being stuck on, the vehicle was easily tailed directly to North Eugene High school, where several subjects in six vehicles were obviously awaiting the arrival of the Camaro, as when the Camaro arrived, the hood again went up, and all subjects congregated in that area briefly, and then all vehicles left the area in different directions at a fast speed. The Camaro then proceeded to 788 Skipper for approximately five minutes, and left the area. The registered owners of the 1977 Camaro are Steve Ross Jackson and Cherie Couts of 788 Skipper, Eugene, Oregon. I have personal knowledge through an investigation that I worked in January 1987 that Steven Ross Jackson, then 16 years of age, assisted Gerald Lynn Killian with the hiding packaging and shipping of approximately 80 pounds of marijuana to Phoenix, Arizona.

56. I was informed by the CRI that LUNDE was to leave on Thanksgiving Day on a trip to the southern California area for the purpose of obtaining a large quantity of cocaine for LUNDE and HANSEN to distribute. I was able to confirm through surveillance of the LUNDE residence, that LUNDE and the yellow Corvette were no longer in the area after Thanksgiving.

57. Information was later received from the CRI that LUNDE was overdue returning from California, and speculation among LUNDE associates was that the cocaine supply was tight, and that LUNDE was having difficulty obtaining the needed quantity.

58. Due to the open, lighted location of the LUNDE residence, together with the suspicious nature of the occupants, there is no suitable position from which to survey the residence by normal methods. A viable alternative to on-site surveillance, was the placement of a video camera on the

previously described EWEB power pole located on Barger Drive, at the intersection of Terry Street.

59. Such installation was effected on December 24, 1989, under the authority of a Lane County District Court Order signed by the Honorable Judge Ann Aiken.

60. As a result of the installation of the surveillance camera, I have been able to confirm additional information supplied by the CRI regarding the times that LUNDE is alleged to have departed the area to obtain a supply of narcotics, and upon the return of LUNDE to the area, have observed a pattern of short stay traffic at the residence which occurs shortly after the arrival of darkness. A pattern consistent with the trafficking of controlled substances.

61. A more specific example of this pattern would be as follows:

12-27-89 4:50 PM LUNDE returns to the

residence in the Corvette, with a male passsenger. A maroon van is moved into the driveway next to the Corvette. Both subjects active around the vehicles and the southwest corner of residence.

5:05 PM The maroon van leaves.

6:06 PM A vehicle arrives and leaves at 6:08 PM.

6:15 PM A vehicle arrives without lights, possibly the LUNDE Blazer, and the porch light flashes.

6:21 PM A vehicle arrives, stops in the street, leaves at 6:27 PM.

6:32 PM A vehicle arrives, turning off lights before coming to a stop, and leaves at 6:46 PM.

6:48 PM A vehicle arrives, parks in the street with lights on, leaves at 6:49 PM.

7:24 PM A vehicle arrives, parks in the street.

7:27 PM A second vehicle

arrives, parking in the street, then backs into the driveway and leaves at 7:28 PM.

7:29 PM The Corvette leaves the driveway, stops next to the vehicle that had arrived at 7:24 PM, then both leave the area together.

62. I know from my training and experience as a police officer, that the type of behavior that was observed on the occasions described above are consistent with the actions of those persons engaged in the illegal trafficking and distribution of controlled substances, and that oftentimes person(s) involved in controlled substances offenses will use their vehicle(s) to secrete and facilitate the transportation of those substances.

63. I obtained a copy of the telephone tolls from the LUNDE residence, the HANSEN Sunriver residence, the HANSEN cellular phone and HANSEN's telephone credit card for the telephone number at Jiggles Tavern,

by authority of Grand Jury Subpoenas. An analysis of said telephone tolls revealed that prior to the "Thanksgiving Day" trip to California, LUNDE was in California, and effected a telephone call on November 5, 1989 from Oakland, California to the HANSEN residence in Sunriver. On November 7, 1989, LUNDE effected a telephone call from Mammoth, California to Jiggles Tavern, Eugene, Oregon, a business owned by HANSEN.

64. During the early part of the "Thanksgiving Day" trip to California, both LUNDE's and HANSEN's telephone tolls revealed several calls by both subjects that were made from Carlsbad and San Diego on the same dates. Additionally, on November 26, 1989, at 9:51 P.M., HANSEN initiated a telephone call from 619-236-499 in San Diego, California, and at 10:08 P.M., LUNDE initiated a call from the same telephone number, establishing that both subjects were at the same location at

approximately the same time.

65. Later during the term of the "Thanksgiving Day" trip, just prior to LUNDE's December 24, 1989 return to the Eugene area, HANSEN places a call on December 22, 1989, to his parents' residence in Eugene, Oregon from Los Angeles, California, indicating that HANSEN was either still in California or had returned to California. A call placed by LUNDE on December 18, 1989, from Pico Rivera, California, a suburb of Los Angeles, again places LUNDE and HANSEN in the same vicinity during the time of the "Thanksgiving Day" trip.

66. Also revealed through the analysis of the telephone tolls was that HANSEN placed two calls to the Eugene Police Department "911" emergency telephone line, using the cellular telephone. These calls were placed on January 21, 1990, at 7:21 P.M. and 7:23 P.M. The "911" telephone

calls are tape recorded, and a review of said tapes was made by Detective James Powell. Detective Powell advised me that the first call was regarding an abandoned auto, and the second call was an inquiry by a subject who did not identify himself, but who Detective Powell recognized by voice as HANSEN, asking if the incoming calls can be traced. This inquiry is consistent with the suspicious and cautious nature of HANSEN.

67. I was informed by the CRI that he had been in contact with a person closely associated with HANSEN and different than the source supplying information on LUNDE, and that this person indicated that he was at a Christmas party and that HANSEN had shown him a "fairly large amount" of cocaine in the trunk of the HANSEN limo, and that HANSEN had supplied cocaine for the party.

68. Information obtained by the CRI

from his source associated with LUNDE, indicated that LUNDE was going to make a trip to a secondary connection in the Portland area to obtain cocaine for the Super Bowl weekend. On January 18, 1990, Detective James Powell and I followed Bonnie and Roger LUNDE to the lounge at Fairfield Lanes Bowling alley, where they met HANSEN and Pam Higgins. Powell and I overheard a conversation between LUNDE and HANSEN wherein LUNDE advised HANSEN that he was going out of town during the early part of the following week, and a telephone conversation on the pay phone wherein LUNDE called "JERRY" in Newport, Oregon and LUNDE said : "Super Bowl, yes I could probably help you out. I'm leaving town on Monday, or early in the week, I'll contact you when I get back." From the tone of the conversation with "Jerry," it was apparent that the call was not a social call but rather, related to business. These conversations,

combined with the CRI information and the actions of LUNDE and HANSEN led us to believe that LUNDE was going to go to a secondary supply source in Portland during the early part of the week of January 22, 1990.

69. On Wednesday, January 24, 1990, at 11:14 A.M., HANSEN was observed by Detective Powell, with the aid of the surveillance camera, to arrive at the LUNDE residence in his red Chevrolet pickup truck. Contact was made with LUNDE, and after HANSEN had a brief conversation on his cellular telephone, HANSEN's white limo arrived at 11:33 A.M., and both subjects entered it and left the area.

70. As the result of an "attempt to locate" teletype that I requested be sent to the I-5 corridor, I received information from Trooper Wilcox of the Oregon State Police Executive Security, that he had sighted the limo, bearing Oregon license

EXEC 5, northbound on I-5, north of the I-205 interchange, at approximately 12:30 P.M. to 1:00 P.M. that date.

71. HANSEN was observed returning to his red Chevrolet pickup, which was parked at LUNDE's, on January 25, 1990, at 10:30 A.M., and dropped off at that locatoin by a red/white Chevrolet pickup, bearing Oregon license PQF-43. A check with Oregon Department of Motor Vehicles shows this vehicle registered to a Bend, Oregon residence, which would be geographically close to HANSEN's Sunriver residence.

72. LUNDE was observed to return to his residence at 3:53 P.M., on Saturday, January 2, 1990, transported by taxi. at 4:25 P.M., LUNDE was picked up at his residence by a subject later identified by photograph as Daniel Chapman in a 1976 BMW 4dr, bearing Oregon license PAK-9, registered to Chapman at 86606 Territorial Road, Veneta, Oregon. The time span

between LUNDE's arrival at his residence, and the arrival of Chapman, is approximately the driving time between the Chapman residence and the LUNDE residence, indicating the potential for an immediate telephone call to Chapman upon LUNDE's arrival at his residence.

73. Information received from the CRI, without the CRI knowing that LUNDE's residence was under surveillance, was that LUNDE had returned from his Portland trip, and had brought 2-1/2 kilograms of cocaine with him. Further, the CRI advised me that LUNDE would be leaving on a trip to southern California in a few days to obtain a large quantity of cocaine, however, HANSEN's airplane is not available for unknown reasons, and it was suspected that a rental vehicle would be used, and that LUNDE would return to HANSEN's Sunriver residence to make contact with HANSEN's Portland contacts.

74. On January 29, 1990, at 2:51 P.M., I observed LUNDE arrive at his residence in his white blazer, stop in the street, exit the vehicle, and contact a black/blue full-sized Chevrolet Blazer as it arrives. LUNDE directed the Blazer into the driveway backwards, then backed his Blazer next to the big Blazer. A male, small in stature exited the large Blazer, both subjects opened the hood on the large Blazer, and after a brief amount of activity in the engine compartment area, closed the hood, entered the LUNDE Blazer and departed. I observed the large Blazer to display California license 2LCD207. A check with California Motor Vehicles Division revealed the registered owner to be a Gilbert Ramos of Huntington Park, California, the same city as Ulysses Segura.

75. I initiated a telephone contact with Detective Fitzgerald of the Huntington Park Police Department, and was informed

that the true identity of Gilbert Ramos was Gilberto Otero Ramos, whom he described as being 5 feet 4 inches in height, and that the address given for Ramos is approximately two blocks from the address of Segura. Detective Fitzgerald advised me that while he had no personal knowledge of any association between the two subjects, he does know that Segura uses other Hispanic persons from the area to perform narcotics-related errands.

76. On January 31, 1990, at approximately 10:30 P.M., a light blue Buick, bearing Oregon license QNA-1, was observed to enter the driveway of the LUNDE residence, and depart with two occupants at approximately 11:10 P.M.

77. A check with Oregon Department of Motor Vehicles shows the vehicle to be 1990 Buick registered to the Avis rental car agency.

78. On February 2, 1990, I contacted

the Avis representative at the Mahlon Sweet Airport, Eugene, Oregon, and was informed that the 1990 Buick, license QNA-1, was rented on January 31, 1990 by ROGER LUNDE, and was to be returned by February 7, 1990. I was further informed that Kelley Wirtz co-signed as the driver of the vehicle. LUNDE initially requested a JEEP vehicle and unlimited mileage, which would be consistent with the trip to California under the current weather conditions. The Jeep was unavailable however, LUNDE did get the unlimited mileage on the Buick.

79. I was advised by the CRI that LUNDE had gone out of town on his trip to the Los Angeles area, and that he would most likely be returning to the Sunriver residence to accommodate the Portland connections prior to returning to Eugene.

80. I have personally observed the residence located at 11 Otter Lane, Sunriver, Deschutes County, Oregon, further

described as a single story, single family dwelling of wood construction, brown in color with the numerals "11" affixed to the front, and is located on the right side of Otter Lane, being the third residence from the entrance.

81. I further established contact with a confidential, reliable citizen, hereafter referred to as "CRC," who has provided information as the description of vehicles at the residence of 11 Otter Lane, as well as the dates and times of said observations. While the CRC was not aware of the nature of the investigation, all the information he/she supplied was found to be accurate either by corroboration by information known to me, or by vehicle registrations being to a vehicle found to be directly related to the investigation.

82. I had information that HANSEN had flown to Mexico to obtain some cocaine just prior to Christmas return to Sunriver to

make the Portland connection, prior to returning to Eugene. A check with the CRC found that HANSEN's Sunriver residence had vehicle activity on the days just preceding December 2, 1989. This activity included the red Chevrolet pickup belonging to HANSEN, the blue Chevrolet Celebrity station wagon belonging to HANSEN, and a white Chrysler 4dr sedan, bearing Oregon license MPC-350. A check with the Oregon Department of Motor Vehicles showed the Chrysler to be registered to John and Vera Zuercher, and was flagged as recently sold. I contacted the registered owner, by telephone, and was informed by Vera Zuercher that the vehicle had been sold to her son, Peter Anderson (date of birth 6-11-50), and that she has not seen, nor heard from her son since November 1989, and does not know where he is currently residing. This subject is the same Anderson who is alleged to be involved with HANSEN

and LUNDE in the cocaine trafficking.

83. I have personally observed the hangar located in the Camp Abbot Hangers, Phase III, at Sunriver, Deschutes County, Oregon, known as Condo/Unit B-10 and B-10A, which is further described as being an airplane hangar and adjoining "Condo Unit" which is located at the southeast corner of the third building which is of metal construction, light tan in color with a white garage style door, and two white pedestrian doors. The door to the "Condo Unit" has a combination security deadbolt lock, and is the only door in any of the hangar building with such security installed. I further have personally observed the two HANSEN hangars located at Mahlon Sweet Airport, Eugene, Lane County, Oregon, further described as being on both the north and south sides of the west end of the northernmost hangar building that borders Greenhill Road, and that I have

observed the airplane to be in the hangar on the north side of the buiilding, and the hangar on the south side is marked "15.," being the hangar that Officer Flynn observed to be storage for boats, etc. The hangar is protected by ADT Alarm Company, with an audible alarm.

84. During the course of this investigation, I was able to establish that JAMES HANSEN is an extremely cautious person, and that attempts to follow his activities by normal methods was not possible. I further learned that HANSEN was involved in a divorce proceeding with his current wife, that he was separated from his wife, and that his current place of residence could not be obtained. I had information that HANSEN was staying in a large house that had a swimming pool, and was located on the top of a hill near Fern Ridge Reservoir. However, due to the fact that HANSEN uses his previous address, his brother-in-law's

address, or the address of Jiggles Tavern for all of his correspondence, his exact location was not known. Additionally, as he was no longer residing with his wife, the location that his many vehicles were parked and kept was not known.

85. As a result of the above situation, I applied for, and obtained a Lane County District Court Search Warrant authorizing placement of an electronical tracking device upon the red 1985 Chevrolet pickup, bearing Oregon license NJB-626. On February 1, 1990, I was involved in the surveillance of JAMES HANSEN with the aid of an electronic tracking device that had been placed upon the red 1985 Chevrolet pickup. During said surveillance, Sergeant Rick Siel, an officer with the Eugene Police Department, advised me that HANSEN was observed to go to a five-bay garage at 3550 Avalon Street, Eugene, Lane County, Oregon, which is further described as being a single story

building of wood construction, blue with white trim, bay doors facing west. At this location, HANSEN removed the white Lincoln limo, EXEC 5, and left with the limo. Sergeant Siel further advised that at 11:02 P.M., HANSEN went to 26330 Fern Ridge Drive, which is described as a large two-story single family dwelling of wood construction, cream in color with blue trim, and a detached two-car garage and one shed-type outbuilding, which is located at the top of a hill overlooking Fern Ridge Reservoir, and is approximately 1/4 mile west of the intersection of Fern Ridge Drive and Kirk-Bryant Road.

86. A check of the utilities by Deputy James Powell revealed that the power at that address was in the name of JAMES HANSEN. Additionally, Deputy Powell contacted Sheriff Dave Burks, who resides on the neighboring property. Deputy Powell advised me that HANSEN had contacted

Sheriff Burks, and introduced himself. And that Sheriff Burks made a positive identification of HANSEN from a color photograph, which I had furnished to Deputy Powell.

87. On February 2, 1990, another surveillance was conducted of HANSEN. During this surveillance, HANSEN WAS observed to have gone to the residence of Pam Higgins at 3941 N. Clarey, Eugene, Oregon. HANSEN had the Higgins vehicle moved from the driveway, enabling the red pickup to be placed into the garage, and then the Higgins vehicle was placed into the driveway, removing the red pickup from sight. The length of stay was not determined, as the surveillance was terminated at that time.

88. I have observed, with the aid of the surveillance camera, the disappearance of the yellow 1988 Corvette for a period of four weeks, and a pattern of rental vehicle

used by LUNDE. I was advised by the CRI that LUNDE had to sell the Corvette in order to satisfy a $22,000 debt to a drug dealer, and that LUNDE would be using a rental vehicle to make a drug run to California at the end of January, 1990. I was able to confirm that LUNDE rented a 1990 Buick from Avis at Mahlon Sweet Airport on January 31, 1990. I was advised by Sergeant Siel that on February 1, 1990, HANSEN advised him that a subject by the name of Flynn had told HANSEN that Flynn was going to kill LUNDE for a "bad debt" and advised HANSEN not to get in the way.

89. LUNDE was observed, with the aid of the surveillance camera, making numerous short trips from the residence, during the 2-hour period prior to LUNDE's departure on the alleged trip to California. These short trips were done with the exclusive use of the rental vehicle, and is consistent with the use of a "safe house" location

for storing larger quantities of narcotics.

90. When the Buick was returned on February 7, 1990, the vehicle mileage was consistent with a trip to Southern California, the "short stay traffic" at the LUNDE residence was consistent with the return of LUNDE with narcotics, and the INET narcotics dog gave strong alert on the wheel well compartment in the trunk and in the glove box of the Buick, consistent with the transportation of narcotics in those areas.

91. Sergeant Rick Siel advised me that on February 7, 1990, upon LUNDE's return to the area from the alleged trip to California, rented Buick, operated by LUNDE was followed by Sergeant Siel from the Barger Road address to Ellmaker Road in Veneta, at which time visual observation of LUNDE was lost.

92. LUNDE rented a marroon 1990 Pontiac Grand Am, bearing Oregon license

QNA-9021, from Avis when the Buick was turned in on February 7, 1990, and then extended the rental of the Pontiac on the due date of February 1, 1990, with a $250 cash security deposit, making it due on February 21, 1990.

93. I know from my training and experience as a narcotics enforcement officer that oftentimes person(s) involved in controlled substance offenses will use vehicle(s) to secrete and transport controlled substances and that rental vehicles will be used in an effort to reduce the knowledge that law enforcement personnel will have regarding the identity of vehicles used, and to eliminate the risk of having personal vehicles seized.

94. On February 19, 1990, Detective James Powell was advised by the CRI that LUNDE was going to make a trip to the Southern California area on or about February 20, 1990, to obtain a large amount

of cocaine. It was not known if LUNDE was going to extend the rental agreemnt on the vehicle again, switch to a new vehicle, or travel by commercial air travel.

95. On Friday, February 23, 1990, Detective Powell was advised by the CRI that he had received information via HANSEN of the location of a "safe house" where cocaine and money is kept for the HANSEN/ LUNDE drug operation. The CRI described the location to Detective Powell, further indicating that the location would have no furniture in the residence except for a table and lamp in one bedroom, a long driveway, and a sports car in the drive-way. Detective Powell and Sergeant Siel contacted the "safe house" location and confirmed the CRI information. The CRI then accompanied Sergeant Siel and Detective Powell to the location and physically pointed out the "safe house" which I have observed to be located at

25982 Vista Drive, Veneta, Lane County, Oregon, which is further described as being a single-story, single-family residence of wood construction, white in color with brown trim and a composition roof located on the south side of Vista Drive, east of Ellmaker Road, and having the numerals "25982" displayed west of the driveway, and its curtilage which includes a brown shed to the rear and several parked vehicles.

96. I know that Vista Drive intersects with Ellmaker Road, and that Ellmaker Road is appromately 3/4 mile long, and is the road in which Sergeant Siel lost visual contact with LUNDE on February 7, 1990 while LUNDE was operating the rental vehicle.

97. I have conferred with Special Agent Bruce M. Kramer of the Internal Revenue Service, who has advised me that he has been a Special Agent for the Internal Revenue Service for approximately 15 years,

and that he is currently assigned to the Criminal Investigation Divison. He has told me that as a Special Agent, he has participated with many state and local law enforcement agencies in criminal investigations and on the execution of numerous search warrants served on business properties and residences of people involved in suspected illegal activities. Special Agent Kramer has told me that it has been his experience that people involved in illegal activities for profit are often exposed based on their expenditure of currency from the profits of their illegal activity, from which it can be proven that there is no legitimate source. He has stated that it has been his experience that financial records reflecting the suspect's fiancial affairs are most often kept either at their business(es), or kept in their residence(s), and that these records often reflect the following:

1) Records and evidence of income and expenses, such as profit and loss statements and income and expense journals, reflecting illegitimate sources of income from narcotics transactions.

2) Records of the accumulation of assets, such as ledgers, balance sheets and financial statements, reflecting both assets and liabilities acquired with proceeds from narcotics transactions.

3) Evidence of the accumulation of assets, such as earnest money agreements, escrow statements, and real estate deeds reflecting the accumulation of real property, invoices and receipts reflecting the purchase of other assets including but not limited to, automobiles, furniture, investments, jewelry, boats and aircraft, acquired with funds traceable to bank accounts or with currency derived with proceeds of narcotics transaction.

4) Evidence of expenditures for

personal living expense, such as invoices and receipts reflecting purchases of personal items including but not limited to food, clothing, entertainment, rent, utilities, vacations, gifts, and other miscellaneous expenditures derived with proceeds of narcotics transactions.

5) Checking and savings account records consisting of, but not limited to: monthly statements, duplicate deposit slips, cancelled checks, correspondence, cashier's checks, and other records reflecting deposits of monies derived from proceeds of narcotics transactions.

6) Letters and other documents reflecting communications between associates and customers of illegal narcotics transactions.

7) Address and phone books reflecting the names, addresses, and telephone numbers of narcotics-related associates and customers.

8) Telephone billing records reflecting the use of the phones for narcotics activities.

9) Currency generated from narcotics activities.

98. I know from my training and experience that in the investigation of crimes, identification is needed for successful prosecution of those person(s) involved in those crimes. That identification can be found in the form of letters, operator's licenses, vehicle registrations, receipts, checks, credit cards, fingerprints, photographs and the like.

99. I know from my experience, and training, as a police officer, that persons involved in the Unlawful Possession, and (or) Delivery, of Controlled Substances, will have in their possession items including, but not limited to, cocaine, packaging materials, scales, ledgers, and currency that is largely derived from the delivery

of said controlled substance.

100. I also know, from my training and experience, that oftentimes person(s) involved in controlled substance offenses will keep the above-described items in their vehicle(s) which are parked on the premises, or stored at secure locations, and that detectable amounts of controlled substances remain in the vehicle.

101. Based on the above information, I have probable cause to believe, that evidence of the crimes of Unlawful Possession and Delivery of the Controlled Substance - Cocaine, can be located at or within the locations which are further described as follows:

1) The Sunriver residence, safe house, and distribution point of the HANSEN/LUNDE operation at 11 Otter Lane, Sunriver, Deschutes County, Oregon, further described as a single-story, single family dwelling of wood construction, brown in

color with the numerals "11" affixed to the front, and is located on the right side of Otter Lane, being the third residence from the entrance.

2) The residence of ROGER DEAN LUNDE at 5135 Barger Drive, Eugene, Oregon, which is further described as being a two-story residence of wood construction, grayish blue in color, with a composition roof, and an unpainted plywood insert where the garage door would normally be. That the residence faces south, on the north side of a cul-de-sac that is a continuation of Barger Drive and that intersects with Barger Drive from the north, and that said residence is bordered on three sides by a wood fence, approximately six feet in height, and is the only building located on the circular portion of the cul-de-sac, surrounded on all sides by vacant lots.

3) The current residence of JAMES HANSEN at 26330 Fern Ridge Drive, which is

described as a large two-story single-family dwelling of wood construction, cream in color with blue trim, and a detached two-car garage and one-shed type outbuilding, which is located at the top of a hill overlooking Fern Ridge Reservoir, and is approxikamtely 1/4 mile west of the intersection of Fern Ridge Drive and Kirk-Bryant Road.

4) A business owned by JAMES HANSEN by the name of Jiggles Tavern located at 2165 West 11th Street, Eugene, Lane County, Oregon, which is further described as being light colored brick building with redwood stained wood trim, located on the north side of West 11th Street, directly west of Waremart Foods, and having the numerals "2165" affixed to the southwest corner, and a "Jiggles Tavern" sign displayed at the entrance off West 11th Street.

5) A second business owned and operated by JAMES HANSEN by the name of the Alaska Bush Company located at 1030 Highway

99N, Eugene, Lane County, Oregon, which is further described as a concrete block constructed building, pale yellow and blue in color with brown wood trim, located on the west side of Highway 99 between the intersections of Royal Avenue and Fairfield Avenue, and being surrounded on three sides by the storage units of "A Attic Store N' Lock," with an "Alaska Bush Company" sign at the entrance off of Highway 99.

6) The hangar owned by JAMES HANSEN located in the Camp Abbot Hangars, Phase III, at Sunriver, Deschutes County, Oregon, known as Condo/Unit B-10 and B-10A, which is further described as being an airplane hangar and adjoining "Condo Unit" which is located at the southeast corner of the third building which is of metal construction, light tan in color with a white garage style door, and two white pedestrian doors. The door to the "Condo Unit" has a combination security, deadbolt lock, and is the only

door in any of the hangar building with such security installed.

7) The two HANSEN hangars located at Mahlon Sweet Airport, Eugene, Lane County, Oregon, further described as being on both the north and south sides of the west end of the northernmost hanger building that borders Greenhill Road, and the hangar on the south side displaying the numerals "157."

8) A five-stall parking garage at 3550 Avalon Street, Eugene, Lane County, Oregon, which is further described as a single-story building of wood construction, blue with white trim, and the bay doors facing west.

9) The Pam Higgins residence located at 391 N. Clarey Street, Eugene, Lane County, Oregon, which is further described as a single-story, single-family dwelling of wood construction, yellow in color with brown trim, a brown composition roof, and a brown garage door, and brown numerals "3941"

located to the left of the wood colored front entry door, and such residence is located on the east side of a spur cul-de-sac off of N. Clarey Street, being the second house north of the intersection.

10) The "safe house" located at 25982 Vista Drive, Veneta, Lane County, Oregon, which is further described as being a single-story, single-family residence of wood construction, white in color with brown trim and a composition roof located on the south side of Vista Drive, east of Ellmaker Road, and having the numerals "25982" displayed west of the driveway, and its curtilage which includes a brown shed to the rear and several parked vehicles.

11) A Beechcraft "Beech Baron 55" aircraft displaying tail numbers N807Q, belonging to JAMES HANSEN.

12) A black and silver 1985 Chevrolet Suburban bearing Oregon license PSQ-274 registered to JAMES HANSEN.

13) A blue 1984 Chevrolet Celebrity station wagon bearing Oregon license QEH-832 registered to JAMES HANSEN.

14) A red 1985 Chevrolet pickup truck bearing Oregon license NJB-626 registered to JAMES HANSEN.

15) A white 1986 Lincoln limo bearing Oregon license EXEC 5 registered to JAMES HANSEN.

16) A white 1986 Chevrolet Blazer bearing Oregon license FXL-906 registered to ROGER LUNDE.

and therefore request the court to issue a warrant to search the persons of JAMES ANDREW HANSEN, ROGER DEAN LUNDE, the above described locations, and the occupant(s), or person(s) found to be in control of said locations, for the described evidence.

-John C. Wood, Detective